



# California Regulatory Notice Register

REGISTER 2007, NO. 7-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

FEBRUARY 16, 2007

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002–931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Thomson West and is offered by subscription for \$202.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. “Periodicals Postage Paid in Saint Paul, MN.” **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Thomson–West/Barclays, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

## PROPOSED ACTION ON REGULATIONS

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### TITLE 2. SECRETARY OF STATE

#### Title 2. Administration Division 7. Secretary of State

#### NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments regarding the proposed action. The Secretary of State adopted the proposed regulations as emergency regulations on December 12, 2005, and then readopted the emergency regulations on April 10, 2006, August 15, 2006, and December 13, 2006. The emergency regulatory action is scheduled to expire on April 12, 2007, unless the Office of Administrative Law receives a certificate of compliance from the Secretary of State by April 12, 2006, or the emergency regulations are readopted.

#### PROPOSED REGULATORY ACTION

The Secretary of State proposes to adopt Sections 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.71, 20108.75, and 20108.80 of Chapter 2 of Division 7 of Title 2 of the California Code of Regulations.

#### PUBLIC HEARING

The Secretary of State will hold a public hearing pursuant to Section 11346.8 of the Government Code on April 02, 2007, at the Office of the Secretary of State, Auditorium, 1500 11th Street, Sacramento, California, 95814, at 10:00 a.m.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on April 2, 2007. Only written comments received at the office of the Secretary of State by that time shall be considered. Submit written comments to the contact person listed below.

#### AUTHORITY AND REFERENCE

**Authority:** Section 12172.5, Government Code and Section 10, Elections Code.

**Reference:** Help America Vote Act of 2002, Pub.L. No. 107-252, § 303(a) (October 29, 2002) 116 Stat. 1666, 42 USC § 15483; Sections 2100, 2101, 2102, 2150, 2153, 2168, 2189, 2193, 2201, 2203, 2205, 2206, 2212, 2220, 2221, 2223, 2224, 2225, 2226, 3400, 3500, 12260, 15372 and 15375, Elections Code.

#### INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

HAVA was drafted following the controversial 2000 presidential election, and was signed into law by the President on October 29, 2002. HAVA provides federal funding to states conditioned upon certification of intent and submission of a plan to implement certain requirements, including the modernization of voting systems, elections official and poll worker training, voter education, accessibility to voting systems by individuals with disabilities or with alternative language needs, establishment of a statewide voter registration database, a complaint procedure, and provisional balloting.

Section 15483(a) of HAVA requires that each state having voter registration requirements shall, through the chief state elections official, implement a single, uniform, official, centralized, interactive computerized statewide voter registration list. The list will be defined, maintained and administered at the state level, will contain the name and registration information of every legally registered voter in the state, and will assign a unique identifier to each legally registered voter in the state. (HAVA, 42 U.S.C. § 15483(a)(1).)

The proposed regulations will establish standards and procedures for processing, transmitting, and maintaining voter registration records in compliance with the requirements of Section 15483(a). The proposed regulations include provisions which will:

- Establish the computerized statewide registration list as the state's official voter registration list for federal elections.

- Establish data exchange and data maintenance requirements.
- Describe the requirements of the elections management system and indicate the voter information to be included in that system.
- State the requirements for processing new voter registration applications.
- Set forth requirements and procedures to be utilized in updating, changing or canceling a voter's registration record.
- Provide guidance for comparing registration records with state death and felony status records.
- Establish requirements concerning duplicate registration records.
- Describe procedures for verifying voter identity and issuing unique voter identification numbers.

In January 2005, the Secretary of State began communications with the U.S. Department of Justice (Department) seeking guidance concerning California's proposed plan for compliance with the statewide voter registration list requirements of HAVA. The Secretary of State and the Department were involved in extensive discussions aimed at achieving California's interim compliance with these requirements by January 1, 2006, and on November 2, 2005, the Secretary of State and the Department entered into an agreement which provided that the Secretary would immediately complete development and begin implementation of an interim plan. That plan utilized an enhanced Calvoter statewide voter registration system, pending development and completion of the new VoteCal statewide voter registration system. Included with the agreement were draft regulations designed to establish standards and procedures for processing, transmitting, and maintaining voter registration records in conformance with HAVA. Pursuant to the signed agreement, the Secretary immediately began the process required by state law for promulgation and implementation of those draft regulations, which were adopted and became operative as emergency regulations on December 12, 2005, and subsequently readopted on April 10, 2006, August 15, 2006, and December 13, 2006.

The emergency regulations implemented the November 2, 2005, agreement between the Secretary of State and the Department to ensure compliance with the January 1, 2006, deadline to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list in accordance with HAVA, thus avoiding possible legal action by the Department, and the potential loss of millions of dollars of federal funding provided to the state to fulfill this requirement of federal law. Since adoption of the regulations, the Secretary of State has continued to fulfill its

commitment to implement the database, working with both the counties and the Department to ensure compliance with HAVA, the regulations, and a new state law that was chaptered prior to the effective date of the regulations, but which took effect January 1, 2006. (See Section 1 of Senate Bill 1016 (Bowen), Chapter 726, Statutes of 2005.)

The first statewide election for federal office following the operative date of these regulations was the primary election held June 6, 2006. As state and local elections officials prepared for the November 7, 2006, General Election, the evaluation of the effectiveness of the emergency regulations continued. Although the Secretary of State had originally intended to promulgate permanent regulations prior to the expiration of the emergency regulations adopted in August 2006, it was determined that the Secretary of State needed a full election cycle to have the complete data necessary to promulgate permanent regulations. Based on communications received from counties and individuals concerning the regulations, the Secretary of State concluded that the need for changes or additions to the regulations would only become apparent once their functionality has been observed in the course of a complete election cycle, including the November 7, 2006, General Election. Accordingly, the Secretary of State determined that it was in the best interests of the voters of this state to readopt the emergency regulations and wait until after the November 7, 2006, General Election to begin the process of revising the regulations and implementing them on a permanent basis.

Following the election of a new Secretary of State, who assumed office on January 8, 2007, the Secretary of State's Office determined that it was again necessary to readopt the emergency regulations to permit the new Secretary to propose additional changes or requirements not presently covered by the current version of the regulations. Readoption of the existing emergency regulations was necessary because voter registration is a continuous process and counties are constantly processing voter registration applications that must be validated through the state system based on these standards; thus, it was in the state's best interest to avoid a time period during which no consistent statewide standards would be in effect. Once the new Secretary took office, the existing emergency regulations were promptly reviewed and revised, and the process begun to expeditiously adopt them as permanent regulations.

#### AVAILABILITY OF TEXT IN PLAIN ENGLISH

The text of the proposed regulations is available in plain English from the contact person listed below.

## DETERMINATIONS REGARDING THE REGULATIONS

The Secretary of State has made the following determinations:

**Mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement under Part 7 (commencing with Section 17500) of Division 4 of the Government Code:** The Secretary of State has determined that the proposed regulations do impose a mandate on the counties, with the state to reimburse the counties using federal HAVA funds.

**Cost or savings to any state agency:** The Secretary of State has determined that the federally mandated HAVA statewide voter registration database and resulting proposed regulations will impose an additional cost to the Secretary of State in the amount of \$2.5 million from its allocation of federal HAVA funds.

**Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code:** The Secretary of State has determined that the proposed regulations will impose a cost to the counties in the amount of approximately \$2.5 million, which is required to be reimbursed by the state using federal HAVA funds.

**Other non-discretionary cost or savings imposed upon local agencies:** The Secretary of State has determined that no such costs or savings will be imposed in the immediate future; however, there could potentially be unknown increased costs and unknown savings from operation and maintenance of the voter registration system.

**Cost or savings in federal funding to the state:** HAVA provides for federal funding to states conditioned upon its planned implementation of several mandates, including implementation of a statewide voter registration database. The proposed regulations are necessary to satisfy federal mandates regarding implementation of the database, and the state has received HAVA funds to comply with these mandates.

**Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** The Secretary of State has made an initial determination that the proposed regulations do not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are a product of federal mandates regarding voter registration outlined in HAVA.

**Cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:** The Secretary

of State is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Adoption of these proposed regulations will not do any of the following:** (1) create or eliminate jobs within California; (2) create new business or eliminate business within California; or, (3) affect the expansion of business currently doing business in California.

**Significant effect on housing costs:** The proposed regulations relate to a statewide voter database and have no significant effect on housing costs.

## BUSINESS REPORTING REQUIREMENT

The business reporting requirement is not applicable to the regulations as the subject matter is the statewide voter database.

## SMALL BUSINESS DETERMINATION

The Secretary of State has determined that the proposed regulations do not affect small business. The only businesses impacted by this regulation are the five (5) election management system vendors doing business in the State of California, none of which are small businesses within the meaning of Government Code section 11342.610. No small business within the meaning of section 11342.610 is legally required to comply with the regulation; is legally required to enforce the regulation; derives a benefit from the enforcement of the regulation; or incurs a detriment from the enforcement of the regulation.

## CONSIDERATION OF ALTERNATIVES

In accordance with paragraph (13) of subdivision (a) of Section 11346.5 of the Government Code, the Secretary of State has determined that no reasonable alternative considered by the Secretary of State, or that has otherwise been identified and brought to the attention of the Secretary of State, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State shall have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice published in the Notice Register, the text of the proposed regulations, and the initial state-

ment of reasons. For further information regarding inspection of the rulemaking file, contact Judith A. Carlson, Elections Counsel, at (916) 651-6971, or Michael J. Kanotz, Elections Counsel, the designated back-up contact, at (916) 653-1690. Copies of the rulemaking file may be obtained at <http://www.sos.ca.gov/elections/elections.htm> or by contacting Judith A. Carlson, Elections Counsel, who is listed below as the contact person, or Michael J. Kanotz, Elections Counsel, who is listed below as the designated back-up contact person.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the close of the public comment period, the Secretary of State may adopt the proposed regulations substantially as described in this notice. If the Secretary of State makes modifications which are sufficiently related to the originally proposed text, the modified text with changes clearly indicated shall be available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the contact person or designated back-up contact person listed below. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available. Once the final statement of reasons is prepared in accordance with subdivision (a) of Section 11346.9 of the Government Code, copies may be obtained at <http://www.sos.ca.gov/elections/elections.htm> or by contacting Judith A. Carlson, Elections Counsel, who is listed below as the contact person, or Michael J. Kanotz, Elections Counsel, who is listed below as the designated back-up contact person.

#### **CONTACT PERSON**

Direct all inquiries and requests for copies of proposed text of the regulations, initial statement of reasons, modified text of regulations, if any, or other information upon which the rulemaking file is based to Judith A. Carlson, Elections Counsel, the designated contact person, or Michael J. Kanotz, Elections Counsel, the designated back-up contact person, at the Secretary of State's Office, Elections Division, 1500 11<sup>th</sup> Street, Sacramento, California, 95814.

### **TITLE 8. PUBLIC EMPLOYMENT RELATIONS BOARD**

The Public Employment Relations Board (PERB or Board) proposes to adopt or amend the regulations de-

scribed below after considering all comments, objections, and recommendations regarding the proposed action.

#### **PROPOSED REGULATORY ACTION**

The Board proposes to amend sections 32135, 32166, 32500, 32630, 32700, 32781, 32784, 32786, 33480, 61020, 61450, 61470, 61480, 81020, 81450, 81470, 81480, 91020, 91450, 91470, and 91480, and to adopt new sections 32705, 33485, 61025, 81025, and 91025.

#### **PUBLIC HEARING**

The Board will hold a public hearing at 10:00 a.m., on April 12, 2007, in Room 103 of its headquarters building, located at 1031 18th Street, Sacramento, California. Room 103 is wheelchair accessible. At the hearing, any person may orally present statements or arguments relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing. Any person wishing to testify at the hearing is requested to notify the Office of the General Counsel as early as possible by calling (916) 322-3198 to permit the orderly scheduling of witnesses and to permit arrangements for an interpreter to be made if necessary.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Board. The written comment period closes at 5:00 p.m. on April 6, 2007. Written comments will also be accepted at the public hearing. Submit written comments to:

Tami R. Bogert, General Counsel  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95184  
FAX: (916) 327-6377  
E-mail: [tbogert@perb.ca.gov](mailto:tbogert@perb.ca.gov)

#### **AUTHORITY AND REFERENCE**

Pursuant to Government Code section 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Educational Employment Relations Act (EERA). Pursuant to Government Code sections 3509(a) and 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regula-

tions to carry out the provisions and effectuate the purposes and policies of the Meyers–Milius–Brown Act (MMBA). Government Code section 3513(h) authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Ralph C. Dills Act (Dills Act). Government Code section 3563 authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Higher Education Employer–Employee Relations Act (HEERA). Pursuant to Public Utilities Code section 99561(f), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Los Angeles County Metropolitan Transportation Authority Transit Employer–Employee Relations Act (TEERA). Pursuant to Government Code sections 3541.3(g) and 71639.1(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Governance and Employment Protection Act (Trial Court Act). Pursuant to Government Code sections 3541.3(g) and 71825(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act).

General reference for section 32135: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code. General reference for section 32166: Sections 3509, 3513(h), 3541.3(a), (b), (h), (l), (m), (n), 3563(a), (c), (g), (k), (l), 71639.1 and 71825, Government Code, and Section 99561(a), (c), (g), (k), (l), Public Utilities Code. General reference for section 32500: Sections 3509, 3509.5, 3520, 3542, 3564, 71639.4 and 71825.1, Government Code, and Section 99562, Public Utilities Code. General reference for section 32630: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32700: Sections 3513(h), 3515.7(d), 3520.5, 3544, 3544.1, 3544.3, 3544.5, 3544.7, 3546, 3573, 3574, 3575, 3576, 3577 and 3583.5, Government Code, and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code. General reference for proposed new section 32705: Sections 3513(h), 3515.7(d), 3520.5, 3544, 3544.1, 3544.3, 3544.5, 3544.7, 3546, 3573, 3574, 3575, 3576, 3577 and 3583.5, Government Code, and Sections

99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code. General reference for section 32781: Sections 3513(h), 3541.3(a) and (e) and 3563(a), Government Code, and Section 99561(a), (e), Public Utilities Code. General reference for section 32784: Sections 3513(h), 3541.3(a), (e) and 3563(a), Government Code, and Section 99561(a), (e), Public Utilities Code. General reference for section 32786: Sections 3513(h), 3541.3(a), (e) and 3563(a), Government Code, and Section 99561(a), (e), (g), Public Utilities Code. General reference for section 33480: Sections 3541.3(c), (l), 3544, 3544.1, 3544.3 and 3544.7, Government Code. General reference for proposed new section 33485: Sections 3541.3(c), (l), 3544, 3544.1, 3544.3 and 3544.7, Government Code. General reference for section 61020: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code. General reference for proposed new section 61025: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code. General reference for section 61450: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(a) and (e), Government Code. General reference for section 61470: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(a) and (e), Government Code. General reference for section 61480: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(a) and (e), Government Code. General reference for section 81020: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code. General reference for proposed new section 81025: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code. General reference for section 81450: Sections 3541.3, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code. General reference for section 81470: Sections 3541.3, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code. General reference for section 81480: Sections 3541.3, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code. General reference for section 91020: Sections 3541.3, 71814, 71823 and 71825, Government Code. General reference for proposed new section 91025: Sections 3541.3, 71814, 71823 and 71825, Government Code. General reference for section 91450: Sections 3541.3, 71823 and 71825, Government Code. General reference for section 91470: Sections 3541.3, 71823 and 71825, Government Code. General reference for section 91480: Sections 3541.3, 71823 and 71825, Government Code.

## POLICY STATEMENT OVERVIEW

The statutes administered by PERB did not, prior to 2002, mandate recognition of employee organizations based solely on a review of proof of support materials.

While certain of the statutes, including the Educational Employment Relations Act (EERA) and Higher Education Employer–Employee Relations Act (HEERA), allowed for voluntary recognition based on verification by PERB of a petitioner’s majority support, and in fact voluntary recognition was quite common under EERA, recognition was never mandated without an election.

Effective January 1, 2002, the Meyers–Milius–Brown Act (MMBA) was amended to require an employer to recognize an employee organization based solely on a card check, so long as the petition involved an appropriate unit and there was no competing organization. Since PERB seldom directly handles representation matters under the MMBA, this change did not significantly affect how PERB processed cases.

However, both EERA and HEERA, were amended, effective January 1, 2004, to also provide for card check recognition where a petitioner demonstrates majority support in an appropriate unit and there is no intervening petitioner. These legislative developments largely form the basis for the substantive changes being proposed.

The most extensive area of proposed changes involves proof of support. While a number of changes are recommended, and are explained further below, particular attention is merited for two changes. First, the proposed changes would add a requirement for proof of support in cases where a petition may lead to recognition of the petitioner as exclusive representative without an election. In such a case, the Board will consider adding a requirement that the proof of support material include language by which the employee signing a proof of support document acknowledges that an election may not be required.

Second, the Board will consider regulations addressing when and how an employee can revoke an authorization card or petition previously signed by the employee. In early 2006, the Board for the first time recognized a right of employees to revoke authorization cards. (*Antelope Valley Health Care District* (2006) PERB Decision No. 1816–M.) The *Antelope Valley* decision addressed the issue in the context of an unfair practice charge case arising under the MMBA and did not address when support may be revoked or how it may be revoked. The proposed regulations would provide both procedural and substantive requirements for revocation of proof of support, including provisions that would make revocation available as an option only in cases that may not require an election. Thus, revocation would not be available in cases, such as fair share fee rescission and decertification, where no change in the status quo can result without an election.

Another substantive change addressed by this package provides a mechanism for PERB to certify an exclusive representative under EERA where the require-

ments for card check recognition are met. A similar provision was previously adopted for HEERA, and the addition of a new section 33485 is proposed for EERA as a means to facilitate the closure of representation cases under that Act.

In addition to the substantive changes in the areas described above, this rulemaking package includes numerous changes to existing regulations that are proposed to clarify, conform or correct the regulation.

## INFORMATIVE DIGEST

Section 32135 sets forth filing requirements, including in subsection (c) the service requirements for documents filed by fax or on-line. The proposed revisions to subsection (c) are intended to conform the language to changes to Section 32140 that were approved by the Board in February 2006 and that took effect May 11, 2006.

Section 32166 provides a means for an organization to become a full party to a representation hearing, and includes a proof of support requirement. The regulation includes cross-references to the proof of support provisions in Chapters 1 and 5, but was not amended to include reference to Chapters 7 and 8 that were added to the regulations in 2004. The proposed revision corrects this oversight.

Section 32500 concerns requests for judicial review of a Board decision in a representation matter. The regulation allows 20 days from the date of the decision for such a request to be filed, but only allows 10 days for responses to the request. With other appeals, such as exceptions to a proposed decision and administrative appeals, responding parties are allowed a time equivalent to that given to the appealing party. The proposed revision would bring section 32500 into conformance with this general policy.

A nonsubstantive, grammatical correction is proposed for section 32630. Section 32630 concerns the issuance of a refusal to issue complaint and dismissal of an unfair practice charge.

Changes to subsection (a) of sections 32700, 61020, 81020 and 91020 are proposed addressing two concerns. The first involves an effort to describe in plain English the requirements as to the statement of intent that must be a part of the proof of support document(s). The nature of the language required varies by type of filing, and the revisions proposed here are intended to spell out those differing requirements in one place to make the regulation more useful to employees and employee organizations who circulate or are asked to sign proof of support.

The second change, affecting only subsection (a)(1) of the same sections, concerns representation petitions that can result in recognition of the petitioner without an

election. While EERA and HEERA as first enacted allowed for voluntary recognition of a majority petitioner, if no competing organization intervened, the statutes also allowed the employer to require an election. With recent legislative enactments, “card-check recognition” is mandated under EERA, HEERA, MMBA, the Trial Court Act and the Court Interpreter Act where the petitioner demonstrates majority support in an appropriate unit and no competing organization successfully intervenes. These legislative developments mean that, in many cases, the review of the proof of support constitutes the “election.” This has led to heightened concerns and interest regarding employee awareness of the significance and consequences of the documents that they are asked to sign. The change proposed would provide for an additional requirement with regard to the intent content of proof of support documents in such cases.

In addition, the deletion of paragraph (5) in section 32700(e), as well as in sections 61020(d), 81020(d) and 91020(d), is proposed. This change would remove the provision allowing a petitioner to submit, as its proof of support, “other evidence as determined by the Board” in lieu of one of the specific types of documents otherwise listed.

The final change affecting sections 32700, 61020, 81020 and 91020, involves the deletion of a sentence in subsection (g) of section 32700 and subsection (f) of the other sections that contemplates a Board agent making a “prima facie” determination concerning alleged fraud or coercion in the gathering or submission of proof of support. The prima facie standard, more often utilized in unfair practice cases as a threshold question in the processing of a charge, is not appropriate in this context. The sentence at issue implies that PERB will investigate the fraud or coercion allegations only if a prima facie showing is made. The proposed revisions are intended to make it clear that any such allegations, if supported by evidence, will be investigated and addressed in the support determination finding.

The intent of proposed new sections 32705, 61025, 81025 and 91025 is to provide guidance for employees, parties and PERB staff with regard to the revocation of proof of support. The proposed sections would provide in part that only the petitioner may withdraw proof of support materials submitted to the Board. The proposed language limits individual employee revocations to situations where an election may not be required, recognizing that where an election is held employees have an opportunity, at the ballot box, to signify their change of heart. Under EERA, HEERA and the MMBA, as well as the two trial court acts, a majority petitioner in an appropriate unit must be recognized by the employer unless a competing organization intervenes with at least 30 percent proof of support. Having signed a card for

the majority petitioner, the employee may not have an opportunity, without the revocation process, to effectuate a change in his or her intent to support the petitioner. The proposed new sections also provide that submission of revocation cards must be by the employee him or herself. This language is intended to mitigate the filing of unfair practice charges alleging that an employer or employee organization has coerced employees into revoking support for a petitioner. The language proposes a time period for the submission of revocations that is congruent with the posting/intervention period. This language recognizes the interest in expedited resolution of questions concerning representation. The proposals also assure confidentiality for employees who submit revocations, and seek only minimal information in addition to the required intent language; both provisions are consistent with requirements for authorization cards and petitions.

In 2006, the Board approved various amendments to sections 32781, 61450, 81450 and 91450 (unit modification petitions). In addition to clarifying when majority employee support would be required for a unit modification petition, the amendments also provided for circumstances where at least 30 percent employee support would be required. The changes to sections 32781, 32784, 32786, 61450, 61470, 61480, 81450, 81470, 81480, 91450, 91470, and 91480 are, with one exception, proposed to conform language as necessary to reflect the changes adopted earlier. The exception concerns proposed language to be added to section 32786(b) that addresses an instance where unit modification petitions should be dismissed, and conforms the language to that presently found in sections 61480, 81480 and 91480.

Proposed new section 33485, and a conforming change to section 33480, would provide for the certification of an exclusive representative under the EERA where no election is required.

## LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

## FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any costs or savings in federal funding to the state.

#### **COSTS OR SAVINGS TO STATE AGENCIES**

No additional costs or savings to state agencies are anticipated.

#### **BUSINESS IMPACT/SMALL BUSINESSES**

PERB has made an initial determination that the proposed regulatory action would have no significant state-wide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610. The proposal only affects public employers, public employees and employee organizations representing public employees.

#### **ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES**

PERB has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

#### **COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **EFFECT ON HOUSING COSTS**

None.

#### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the

proposed regulations at the above-mentioned hearing or during the written comment period.

#### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office, at the address below. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies of these documents and the Final Statement of Reasons may be obtained by contacting Les Chisholm, Division Chief, Office of the General Counsel, at the address or phone number listed below.

#### **ADOPTION OF PROPOSED REGULATIONS, AVAILABILITY OF CHANGED OR MODIFIED TEXT AND FINAL STATEMENT OF REASONS**

Following the hearing, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text — with changes clearly indicated — shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Les Chisholm, Division Chief, Office of the General Counsel, at the address indicated below. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **WEB SITE ACCESS**

The Board will maintain copies of this Notice, the Initial Statement of Reasons and the text of the proposed regulations on its web site, found at [www.perb.ca.gov](http://www.perb.ca.gov), throughout the rulemaking process. The Final Statement of Reasons or, if applicable, notice of a decision not to proceed, will be posted on the web site following the Board's action.

#### **CONTACT PERSONS**

Any questions or suggestions regarding the proposed action or the substance of the proposed regulations should be directed to:

Tami R. Bogert, General Counsel  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95814  
(916) 327-8381

or

Les Chisholm, Division Chief  
Office of the General Counsel  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95814  
(916) 327-8383

## HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

**Date and Time:** **April 19, 2007**  
**10:00 a.m.**

**Location:** **California Department of Insurance**  
**45 Fremont Street**  
**22<sup>nd</sup> Floor Hearing Room**  
**San Francisco, California 94105**

## TITLE 10. DEPARTMENT OF INSURANCE

**STATE OF CALIFORNIA**  
**DEPARTMENT OF INSURANCE**  
**45 Fremont Street, 21<sup>st</sup> Floor**  
**San Francisco, California 94105**

**RH06050871**

**January 16, 2007**

### NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING REVISIONS TO CALIFORNIA AUTOMOBILE ASSIGNED RISK PLAN

#### SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner will hold a public hearing to address the proposed amendments to Rules 5, 122 and 124 of the California Automobile Assigned Risk Plan (CAARP) Manual of Rules and Rates and the withdrawal of endorsement AP 90 26 05 05 Drive Other Car Coverage Broadened Coverage for Named Individuals.

#### AUTHORITY TO ADOPT RATES AND PROCEDURES AND REFERENCE

The Commissioner will consider the proposed rates pursuant to the authority vested in him by Section 11620 of the California Insurance Code. The Commissioner's decision on the proposed rates will implement, interpret, or make specific the requirements of Insurance Code Section 11624(e). Government Code §11340.9(g) applies to this proceeding.

## ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

#### WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposal prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[mohre@insurance.ca.gov](mailto:mohre@insurance.ca.gov)  
Telephone: (415) 538-4112  
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

## DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on April 19, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

## ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492–3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

## INFORMATIVE DIGEST

In response to complaints about fees being charged for applications at renewal Rule 5 will be amended to clarify that a fee should only be charged at the initial receipt of the application and is not to be charged at renewal as long as the policy remains in force. If a policy is canceled for nonpayment of premium or any other reason allowed by Plan rules, the company would issue an SR26 to cancel the initial filing. In those cases or anytime a new application is submitted the filing fee may be charged.

The revision to Rule 122 has no impact as producers are currently reporting driver information on a quarterly basis to servicing carriers. However this was information made known through a circular issued by

CAARP. CAARP would like to formally reflect this procedure in the Rates and Rule Manual by amending Rule 122 to include a new paragraph B.4 to specify that the producer will report all driver changes on a quarterly basis for risks with 25 or more drivers and that the carrier will bill for any additional premium or return any unearned premium based on driver surcharges.

Complaints from producers found that the requirements needed to be eligible for the Rule 124 discount were sometimes impossible to meet. The Advisory Committee requested that AIPSO review what other states have done to calculate the premium and requested that actuaries look at the rate levels for excess coverage as well as what the rate would be if the excess and primary coverage were a combined rate. AIPSO came up with three options (1) accept copies of declarations pages, (2) delete the discount so that all food delivery operations would be rated the same, or (3) delivery receipts rating as well as clarifying eligibility requirements.

Following discussions it was agreed that option 3 revised to delete the eligibility requirements would be best. AIPSO was asked to provide Plan staff what information would be needed to develop a proposed revenue neutral rate and minimum premium. Based on information supplied to AIPSO actuary staff a rate of \$9.42 per \$1,000 of delivery receipts was proposed. The subcommittee requested that additional information be provided by the service carriers from their book of business for creditability. Also AIPSO was asked to look at the voluntary market for benchmark premiums in these types of risk.

The additional data was reviewed and Paragraph A of Rule 124 is proposed to be amended to introduce a rating procedure based on delivery sales. The amount agreed upon was \$9.58 per \$1,000 of delivery sales with a minimum premium of \$500.

AP 90 26 05 05 Drive Other Car Coverage Broadened Coverage for Named Individual needs to be withdrawn as it is not applicable to the Plan as there is no corresponding rule.

## COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

## LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS OR COSTS WHICH  
MUST BE REIMBURSED PURSUANT TO  
GOVERNMENT CODE SECTIONS  
17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE  
AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE  
PERSONS OR ENTITIES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2)). However, certain food delivery operations can expect premium changes.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendment in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the

statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

#### **AUTOMATIC MAILING**

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

#### **AVAILABILITY OF MODIFIED TEXT OF REGULATIONS**

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

### **TITLE 10. DEPARTMENT OF INSURANCE**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

**RH05047244**

**January 16, 2007**

#### **NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING REVISIONS TO CALIFORNIA AUTOMOBILE ASSIGNED RISK PLAN**

#### **SUBJECT OF HEARING**

California Insurance Commissioner Steve Poizner will hold a public hearing to address the proposed amendments to Sections 24, 55 and 140 California Automobile Assigned Risk Plan (CAARP) Manual of

Rules and Rates and to revise the Private Passenger Rate Pages.

#### **AUTHORITY TO ADOPT RATES AND PROCEDURES AND REFERENCE**

The Insurance Commissioner proposes changes to the California Assigned Risk Automobile Plan Manual of Rules and Rates, referenced in Title 10, Chapter 5, Subchapter 3, Article 8, Section 2498.5 of the California Code of Regulations, pursuant to the authority vested in him by California Insurance Code Sections 11620 and 11624. Government Code Sections 11340.9(g) and 11343(a) apply to these proceeds.

#### **HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

**Date and Time: April 19, 2007  
10:00 a.m.**

**Location: California Department of  
Insurance  
45 Fremont Street  
22<sup>nd</sup> Floor Hearing Room  
San Francisco, California 94105**

#### **ACCESS TO HEARING ROOM**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

#### **WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposal prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[mohre@insuance.ca.gov](mailto:mohre@insuance.ca.gov)  
Telephone: (415) 538-4112  
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

#### DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on April 19, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST

The California Department of Insurance (CDI) performed a market conduct exam of the rating and under-

writing practices of the CAARP. In response to findings CAARP has proposed to amend Rules 24 and 55 of the Rules and rates Manual so that the accident provisions comply with CCR section 2632.1. This revision will ensure that private passenger and commercial risks written through CAARP will be assigned penalty points for accidents in the same manner.

ISO has revised the general liability definition of "mobile equipment" and ("auto") to exclude the over the road exposure for mobile equipment subject to auto insurance laws. CAARP proposes to Amend Rule 140 to provide rating procedures for any mobile equipment subject to auto insurance laws ensuring that there are no coverage gaps for insureds that use both general liability form and a commercial auto form to insure their mobile equipment exposures.

CAARP proposes to amend the private passenger rates schedule to eliminate the \$25/50 and \$30/60 limits and rates as private passenger risks are not available.

#### COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

#### LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

#### MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

#### COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE  
PERSONS OR ENTITIES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2)).

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS  
ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

AVAILABILITY OF MODIFIED TEXT  
OF REGULATIONS

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the

amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

**Location:** California Department of Insurance  
45 Fremont Street  
22<sup>nd</sup> Floor Hearing Room  
San Francisco, California 94105

**TITLE 10. DEPARTMENT OF INSURANCE**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

RH06093102

January 16, 2007

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING REGARDING  
LOW COST AUTOMOBILE INSURANCE  
PROGRAM PLAN OF OPERATIONS**

**SUBJECT OF HEARING**

California Insurance Commissioner Steve Poizner will hold a public hearing to consider proposed amendments to Sections 8, 14 and 15 of the California Low Cost Automobile Insurance Program.

**AUTHORITY TO ADOPT RATES  
AND REFERENCE**

The Insurance Commissioner proposes changes to the California Low Cost Automobile Insurance Program Plan of Operations, referenced in Title 10, Chapter 5, Subchapter 3, Article 8, Section 2498.6 of the California Code of Regulations, pursuant to the authority vested in him by California Insurance Code Sections 11620, 11624, 11629.7, 11629.79, 11629.9 and 11629.99. The purpose of these amendments is to implement, interpret, and make specific the provisions of California Insurance Code Sections 11623.5, 11629.7, 11629.71, 11629.74, 11629.79, 11629.9, 11629.91, 11629.94 and 11629.99.

**HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed amendments at the following date, time, and place:

**Date and Time:** April 19, 2007  
10:00 a.m.

**ACCESS TO HEARING ROOM**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS:  
AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposed changes prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[mohre@insurance.ca.gov](mailto:mohre@insurance.ca.gov)  
Telephone: (415) 538-4112  
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

**DEADLINE FOR WRITTEN COMMENTS**

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on April 19, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

## ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492–3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

## INFORMATIVE DIGEST

Currently the CAARP Plan of Operations allows insurers to enter into agreements whereby one insurer (servicing company) will write the assigned risk business of another insurer (buy-out company) for a fee. The purpose of the proposed amendments is to update the current LAD procedure to be consistent with the LAD procedures in the CAARP Plan of Operations. Although the LCA sets forth general eligibility requirements for a servicing company, it does not provide specific premium to surplus ratios or certain other criteria or conditions under which certain criteria may be waived. Also, it does not address a process to monitor continuing eligibility or capacity or set forth assignment procedures if the appointment of a servicing carrier is terminated. The proposed amendments will clarify the various procedures under LAD.

Changes to Section 8 B. Limited Assignment Distribution Procedure eligibility requirements are as follows;

- Once an insurer is appointed as a servicing company the insurer must continue to meet the service company requirements;
- If an insurer does not write 5% of the voluntary private passenger non-fleet car years in California but is a part of a group of insurers, the combined market share of the group may be used to meet the market share eligibility requirement;

- The insurer will have to maintain a net premium to surplus ratio of 3 to 1;
- For three continuous years from the most current publication the insurer must have maintained a rating of A– or better from A.M. Best;
- The applicant must have been licensed and writing private passenger automobile insurance in California without restriction for at least three years;
- The Advisory Committee may consider a servicing company applicant that does not meet the market share requirement or the licensing and writing requirement. If the Advisory Committee approves such a servicing carrier it would then forward the recommendation to the Commissioner for approval;
- Eligibility criteria not subject to exception include the statutory capital and surplus requirement, the net premium to surplus ratio requirement, and maintenance of the required financial rating of A– or better from A.M. Best;
- Guidelines for Plan monitoring of service company eligibility and buy-out capacity and for terminating a LAD servicing company are specified in Sections 8.B.6 through 8;
- Companies with market shares greater than 5% may apply to the Advisory Committee and Commissioner for an exception to buy out as stated in Section 8.B.9;
- Section 8.B.16 provides guidance in situations where there is a conflict between the Plan of Operations and the buy-out company contract;
- Sections 14 and 15 add language to the requirement of reporting of statistical data. It specifies that each insurer is responsible for reporting statistical data in accordance with the annual AIPSO Statistical Program. It also allows that if an insurer fails to report its data or the data is deemed inaccurate, by the judgment of the statistical agent and AIPSO, data shall be estimated by the statistical agent designated by the insurer and that information is authorized to be released to AIPSO. It is the responsibility of the insurer to provide corrected data if needed.

## COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

## LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS OR COSTS WHICH  
MUST BE REIMBURSED PURSUANT TO  
GOVERNMENT CODE SECTIONS  
17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE  
AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE  
PERSONS OR ENTITIES

The Commissioner has initially determined that the proposal will not impact businesses, but will have a potential cost impact on private persons directly affected.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business (Gov. Code Section 11342.610(b)(2)).

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed amendments describing the changes are plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments, in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details of CAARP's proposed amendments are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

The final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Departments web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental informa-

tion contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

#### **AUTOMATIC MAILING**

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

The Initial Statement of Reasons and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

#### **AVAILABILITY OF MODIFIED TEXT**

With the exception of nonsubstantive or grammatical changes, if the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the regulations.

### **TITLE 10. DEPARTMENT OF INSURANCE**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

RH06050872

January 16, 2007

#### **NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING REVISIONS TO CALIFORNIA AUTOMOBILE ASSIGNED RISK PLAN**

#### **SUBJECT OF HEARING**

California Insurance Commissioner Steve Poizner will hold a public hearing to address the proposed amendments to Sections 1, 26, 37, 44 and 54 of the California Automobile Assigned Risk Plan (CAARP) Plan of Operations.

#### **AUTHORITY TO ADOPT RATES AND PROCEDURES AND REFERENCE**

The Insurance Commissioner proposes changes to the California Assigned Risk Automobile Plan Plan of Operations, referenced in Title 10, Chapter 5, Subchapter 3, Article 8, Section 2498.4.9 of the California Code of Regulations, pursuant to the authority vested in him by California Insurance Code Sections 11620 and 11624.

#### **HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

**Date and Time:** **April 19, 2007  
10:00 a.m.**

**Location:** **California Department of  
Insurance  
45 Fremont Street  
22<sup>nd</sup> Floor Hearing Room  
San Francisco, California 94105**

#### **ACCESS TO HEARING ROOM**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

#### **WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposal prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[mohre@insurance.ca.gov](mailto:mohre@insurance.ca.gov)  
Telephone: (415) 538-4112  
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

#### DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on April 19, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Plan of Operations currently does not require that an insurer must notify an insured that any premium refund must be applied to any outstanding balance due on a current The current Plan rule does not comply with

AB 1043's notice procedure relating to the return of unearned premium funds checks.

AB 1043 expands the current Plan procedure to allow the application of the premium refund to the renewal deposit. In addition AB 1043 introduces a notice requirement for insurers and servicing carriers who apply a premium refund to a balance on the current in force policy or to reduce the renewal premium deposit.

AB 1043 requires that insurers writing commercial automobile insurance issue premium refund checks within 80 business days. Plan rules currently require that a premium refund check be issued within 30 days. The Plan recommends that this be changed to 25 business days to maintain the consistency that currently exists between Plan procedures for issuance of premium refunds for private passenger and commercial risks.

Plan procedures for Sections 1, 26, 37, 44 and 54 will be amended for private passenger and commercial risks not subject to audit, a premium refund check generated by cancellation must be mailed by the assigned insurer or servicing carrier within 25 business days after the effective date of the cancellation. If a commercial risk is subject to audit, the servicing carrier must mail the return premium check within 25 business days following the date the typed audit is produced.

Consistent with Plan rules, the assigned insurer or servicing carrier will continue to apply premium refunds to any outstanding balance due on the in force Plan policy. In addition, a premium refund may be applied to reduce a renewal deposit. Instances when the premium refund is applied a balance on the current in force policy or the renewal deposit, the assigned insurer or servicing carrier must provide the insured with written notice.

#### COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

#### LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

#### MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district

for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

#### COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

#### COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

#### IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2).

#### SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

#### ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

#### TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and the express terms of the proposed action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

#### FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

#### ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

#### AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

**AVAILABILITY OF DOCUMENTS  
ON THE INTERNET**

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

**AVAILABILITY OF MODIFIED TEXT  
OF REGULATIONS**

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

**TITLE 10. DEPARTMENT OF  
INSURANCE**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

**RH05047241**

**January 16, 2007**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING REGARDING  
REVISIONS TO CALIFORNIA AUTOMOBILE  
ASSIGNED RISK PLAN**

**SUBJECT OF HEARING**

California Insurance Commissioner Steve Poizner will hold a public hearing to address the proposed amendments to Sections 8, 28, 33, 37, 43, 48 and Private Passenger Application of the California Automobile Assigned Risk Plan (CAARP) Plan of Operations.

**AUTHORITY TO ADOPT RATES AND  
PROCEDURES AND REFERENCE**

The Commissioner will consider the proposed addition pursuant to the authority vested in him by California Insurance Code Sections 11620 and 11624. Government Code Sections 11340.9(g) and 11343(a) apply to these proceeds.

**HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

**Date and Time:** **April 19, 2007  
10:00 a.m.**

**Location:** **California Department of  
Insurance  
45 Fremont Street  
22<sup>nd</sup> Floor Hearing Room  
San Francisco, California 94105**

**ACCESS TO HEARING ROOM**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS:  
AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposal prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
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Telephone: (415) 538-4112  
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All persons are invited to present oral and/or written testimony at the scheduled public hearing.

**DEADLINE FOR WRITTEN COMMENTS**

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address listed above **no later than 5:00 p.m. on April 19, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address;

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492–3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST

The LAD buy-out contracts are between the buy-out company and the servicing company. As a result of this relationship, staff must wait for notification from the LAD servicing company before terminating the LAD grouping and restricting a buy-out company that is in rehabilitation. Until the buy-out company is removed from LAD at the start of the next quota quarter, the company's assignments continue to go to the LAD servicing company. Due to the existence of the insurance department order and the financially troubled status of the buy-out company with respect to buy-out fees owed, the company should be removed from LAD as soon as possible. Therefore, it is necessary to terminate the LAD buy-out contract on a timely basis to ensure the company is removed from LAD at the start of the next quota quarter.

For consistency in references to Insurance Department orders, paragraph B.7.a will be amended. Paragraph B.14 pertaining to the determination of each buy-out company's LAD obligation by the servicing company is amended to include reference to the annual quota

report, the source of the data used by the servicing company. Provisions relating to the termination of the buy-out contract are introduced in new paragraph B.15.

Currently insurers writing Plan private passenger risk can contact the applicant or insured to obtain underwriting information to remedy application violations or deficiencies. If the information is not provided the policy could be insured with additional charges or cancelled.

The current request for additional information request does not include the consequences if the asked for information is not provided. The proposed changes will meet the standard in the voluntary market.

Section 28 would clarify procedures for Plan and insurer request to applicants and procedures for information to correct application deficiencies and/or violations. Section 33 would be amended to clarify performance standards for insurer request for information. Section 37 would be amended to address (1) when the Plan assigns an application with an uncorrected violation and the insurer must follow-up on information already requested and (2) when the insurer received and application without violations and must request additional information. Paragraph A.6 would require that the insurers written request for underwriting information and/or renewal questionnaire contain a statement advising the applicant of the consequence of not providing the asked for information. The statements would be in Spanish and English. On the private passenger application a new tenth statement would be added to inform the applicant of the consequences of not providing the information.

Plan rules require that a servicing carrier must provide hired and nonowned liability coverage if the Plan commercial auto policy has an "Any Auto" symbol or any other local, state, or federal filing. The extent of coverage section of the Plan of Operations does not state that hired and nonowned liability coverage is required for commercial risks under certain conditions. When the coverage is added during the underwriting process the insured's annual premium increases and producers complain the coverage is being added after the fact.

Section 43 paragraph A would be amended to clarify when hired and nonowned liability coverage must be provided on a commercial auto policy.

The current Plan does not provide a procedure for the consistent handling of midterm producer changes for commercial risks. Servicing carriers currently process changes in accordance with individual company procedures.

The proposed new Section 48 is introduced to provide a consistent procedure for handling midterm producer changes for commercial risks. The Plan introduction would be amended to include the new Authoriza-

tion of Change Producer of Record and Notice of Agency Acquisition/Transfer/Merger forms.

#### COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

#### LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

#### MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

#### COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

#### COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

#### IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2)).

#### SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

#### ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

#### TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

#### FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail

request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

#### **ACCESS TO RULEMAKING FILE**

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

#### **AUTOMATIC MAILING**

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

#### **AVAILABILITY OF MODIFIED TEXT OF REGULATIONS**

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

### **TITLE 10. DEPARTMENT OF INSURANCE**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

**RH05047243**

**January 16, 2007**

### **NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING REVISIONS TO CALIFORNIA AUTOMOBILE ASSIGNED RISK PLAN**

#### **SUBJECT OF HEARING**

California Insurance Commissioner Steve Poizner will hold a public hearing to address the proposed amendments to Section 8 California Automobile Assigned Risk Plan (CAARP) Plan of Operations.

#### **AUTHORITY TO ADOPT RATES AND PROCEDURES AND REFERENCE**

The Commissioner will consider the proposed addition pursuant to the authority vested in him by California Insurance Code Sections 11620 and 11624. Government Code Sections 11340.9(g) and 11343(a) apply to these proceeds.

#### **HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

**Date and Time:** **April 19, 2007  
10:00 a.m.**

**Location:** **California Department of  
Insurance  
45 Fremont Street  
22<sup>nd</sup> Floor Hearing Room  
San Francisco, California 94105**

#### **ACCESS TO HEARING ROOM**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

#### **WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposal prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[mohre@insurance.ca.gov](mailto:mohre@insurance.ca.gov)  
Telephone: (415) 538-4112  
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

#### DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on April 19, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST

Prior to 9/11 the auto residual market did not exclude losses resulting from acts of terrorism. On November 26, 2002 President Bush signed in to law the Terrorism Risk Insurance Act ("TRIA") of 2002. It was a three year program that expired on December 31, 2005. On December 22, 2005 TRIA was extended however it did not include commercial auto and garage. Because the Terrorism Risk Prevention Program has been terminated CAARP proposes an Exclusion of Terrorism endorsement that would provide an exclusion for catastrophic terrorism losses.

The federal Terrorism Risk Insurance Program (TRIP) has been terminated with the respect to commercial auto insurance including garage insurance. ISO has introduced CA 23 84 01 06; the new form provides an exclusion for catastrophic terrorism losses. This exclusion applies to any terrorist act involving a nuclear weapon; or the release of a pathogenic, poisonous, biological or chemical material; or total loss over \$250,000,000; or 50 or more deaths.

Previously, coverage for mobile equipment exposure was excluded under the commercial auto program as such exposure is more appropriately handled under a commercial general liability policy.

CA 20 15 10 01 is currently being used to provide coverage for specified mobile equipment. The form is being withdrawn from use as the operation of such mobile equipment is a commercial general liability exposure.

CA 00 51 12 04 is introduced to provide liability coverage for mobile equipment that meets the requirements for compulsory, financial responsibility or other motor vehicle insurance laws; this form will also avoid a coverage gap due to the withdrawal of CA 20 15 10 01.

#### COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

#### LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

**MANDATES ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS OR COSTS WHICH  
MUST BE REIMBURSED PURSUANT TO  
GOVERNMENT CODE SECTIONS  
17500 THROUGH 17630**

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

**COST OR SAVINGS TO ANY STATE  
AGENCY; FEDERAL FUNDING**

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

**SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE**

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

**COST IMPACT ON PRIVATE PERSONS  
OR ENTITIES**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**IMPACT ON HOUSING COSTS**

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

**IMPACT ON SMALL BUSINESS**

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2)).

**SPECIFIC TECHNOLOGIES OR EQUIPMENT**

The proposal would not mandate the use of specific technologies or equipment.

**ALTERNATIVES**

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**PLAIN ENGLISH**

The proposed changes describing CAARP's proposals are in plain English.

**TEXT AND INITIAL STATEMENT OF REASONS**

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

**FINAL STATEMENT OF REASONS**

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

**ACCESS TO RULEMAKING FILE**

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the

contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

#### AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

#### AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

### TITLE 10. DEPARTMENT OF INSURANCE

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105

**RH05047239**

**January 16, 2007**

#### NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING LOW COST AUTOMOBILE INSURANCE PROGRAM PLAN OF OPERATIONS

#### SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner will hold a public hearing to consider proposed amendments to Section 8 for the California Low Cost Automobile Insurance Program.

#### AUTHORITY TO ADOPT RATES AND REFERENCE

The Insurance Commissioner proposes changes to the California Low Cost Automobile Insurance Program Plan of Operations, referenced in Title 10, Chapter 5, Subchapter 3, Article 8, Section 2498.6 of the California Code of Regulations, pursuant to the authority vested in him by California Insurance Code Sections 11620, 11624, 11629.7, 11629.79, 11629.9 and 11629.99. The purpose of these amendments is to implement, interpret, and make specific the provisions of California Insurance Code Sections 11623.5, 11629.7, 11629.71, 11629.74, 11629.79, 11629.9, 11629.91, 11629.94 and 11629.99.

#### HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed amendments at the following date, time, and place:

**Date and Time:** **April 19, 2007**  
**10:00 a.m.**

**Location:** **45 Fremont Street**  
**22<sup>nd</sup> Floor Hearing Room**  
**San Francisco, California 94105**

#### ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

#### WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed amendments prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Legal Division  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
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The backup agency contact person for this proceeding will be:

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All persons are invited to present oral and/or written testimony at the scheduled public hearing.

#### DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on April 19, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Written comments shall be submitted by one method only.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Currently there is no procedure in place to quickly terminate a LAD servicing carrier that is in rehabilita-

tion. This allows insureds to be placed with the troubled servicing carrier until it can be addressed in the next quarter.

The LAD buy-out contracts are between the buy-out company and the servicing company. As a result of this relationship, staff must wait for notification from the LAD servicing company before terminating the LAD grouping and restricting a buy-out company that is in rehabilitation. Until the buy-out company is removed from LAD at the start of the next quota quarter, the company's assignments continue to go to the LAD servicing company. Due to the existence of the Insurance Department order and the financially troubled status of the buy-out company with respect to buy-out fees owed, the company should be removed from LAD as soon as possible. Therefore, it is necessary to terminate the LAD buy-out contract on a timely basis to ensure the company is removed from LAD at the start of the next quota quarter.

In Section 8, clarification is introduced as to when the LAD buy-out contract of a company that is declared insolvent or is placed in rehabilitation terminate. This is consistent with how these companies are currently handled.

For consistency in references to Insurance Department orders, paragraph B.8.a will be amended. Section 8.B.14 pertaining to the determination of each buy-out company's LAD obligation by the servicing company is amended to include reference to the annual quota report, the source of the data used by the servicing company. Provisions relating to the termination of the buy-out contract are introduced in new subsection 8.B.16.

#### COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

#### LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

#### MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require re-

imbursement, or in other nondiscretionary costs or savings to local agencies.

#### COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

#### COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Commissioner has initially determined that the proposal will not impact businesses, but will have a potential cost impact on private persons directly affected.

#### IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

#### IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business (Gov. Code Section 11342.610(b)(2)).

#### SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

#### ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

#### PLAIN ENGLISH

The proposed amendments describing the changes are plain English.

#### TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments, in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and the express terms of the proposed action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details of CAARP's proposed amendments are on file with the Commissioner and available for review as set forth below.

#### FINAL STATEMENT OF REASONS

The final state of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

#### ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

#### AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

**AVAILABILITY OF DOCUMENTS  
ON THE INTERNET**

The Initial Statement of Reasons and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

**AVAILABILITY OF MODIFIED TEXT**

With the exception of nonsubstantive or grammatical changes, if the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the regulations.

**TITLE 10. DEPARTMENT OF  
INSURANCE**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

**RH05047235**

**January 16, 2007**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING REGARDING  
LOW COST AUTOMOBILE INSURANCE  
PROGRAM PLAN OF OPERATIONS**

**SUBJECT OF HEARING**

California Insurance Commissioner Steve Poizner will hold a public hearing to consider proposed amendments to Sections 4, 14, 19, 20, 26, 28, 33, 34 and 37 of the California Low Cost Automobile Insurance Program.

**AUTHORITY TO ADOPT RATES  
AND REFERENCE**

The Insurance Commissioner proposes changes to the California Low Cost Automobile Insurance Program Plan of Operations, referenced in Title 10, Chapter 5, Subchapter 3, Article 8, Section 2498.6 of the California Code of Regulations, pursuant to the authority vested in him by California Insurance Code Sections 11620, 11624, 11629.7, 11629.79, 11629.9 and 11629.99. The purpose of these amendments is to implement, interpret, and make specific the provisions of

California Insurance Code Sections 11623.5, 11629.7, 11629.71, 11629.74, 11629.79, 11629.9, 11629.91, 11629.94 and 11629.99.

**HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed amendments at the following date, time, and place:

**Date and Time: April 19, 2007  
10:00 a.m.**

**Location: 45 Fremont Street  
22<sup>nd</sup> Floor Hearing Room  
San Francisco, California 94105**

**ACCESS TO HEARING ROOM**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS:  
AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposed amendments prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Legal Division  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
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All persons are invited to present oral and/or written testimony at the scheduled public hearing.

## DEADLINE FOR WRITTEN COMMENTS

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## ADVOCACY OR WITNESS FEES

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California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492–3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

## INFORMATIVE DIGEST

LCA references to sections of the old CAARP regulation must be updated to reflect the transition to the new CAARP Plan of Operations.

Section 4 of the LCA manual stated that the minimum assessment would be proportional to the insurers obligation pursuant to the program. The previous minimum amount was \$4 and was found in California Code of Regulations section 2490. The updated minimum is now \$250 and is found in the CAARP Plan of Operations Section 4.B.

Section 14 deals with an insurer that fails to subscribe to the CAARP program. CAARP is the insurer of last resort it assigns drivers that may not be able to get coverage to insurers. Any insurer that is licensed to offer

private passenger automobile coverage in California is automatically enrolled in the CAARP program. LCA is a program like CAARP. It offers low cost insurance to those who meet requirements set out by the legislature and like CAARP an insurer is automatically enrolled if it is licensed to offer private passenger automobile coverage. These were formally found in California Code of Regulations section 11625.

Section 19 sets the requirements to become a certified producer to allow brokers to submit applications for both CAARP and LCA. Section 19 also set out performance standards to remain a certified producer and procedures to handle violations of the producer standards. These were formally found in California Code of Regulations section 2431.

Section 20 sets the standards that a certified producer must follow in order to remain certified. These were formally found in California Code of Regulations section 2431.2.

Section 26 refers to the installment premium options that are the same as the installment charge in the CAARP Plan of Operations. This was formally found in California Code of Regulations section 2443.

Section 28 refers to the retraction procedures involving Electronic Effective Date Procedure and the Electronic Application Submission Interface. Also the procedure for return premium when the applicant refuses to accept a policy. This information was previously found in California Code of Regulations sections 2431.2 and 2444.5.

Section 33 deals with the cancellation at the request of the insured and cancellation by insurer. This was formally found in California Code of Regulations section 2444.5.

Section 34 addresses the producer commission for an LCA assignment. This was formally found in California Code of Regulations section 2462(a)(2).

Section 37 contains information dealing with violations of insurer performance standards. This was formally found in California Code of Regulations section 2431.3.

## COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

## LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

**MANDATES ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS OR COSTS WHICH  
MUST BE REIMBURSED PURSUANT TO  
GOVERNMENT CODE SECTIONS  
17500 THROUGH 17630**

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

**COST OR SAVINGS TO ANY STATE  
AGENCY; FEDERAL FUNDING**

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

**SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE**

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

**COST IMPACT ON PRIVATE PERSONS  
OR ENTITIES**

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**IMPACT ON HOUSING COSTS**

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

**IMPACT ON SMALL BUSINESS**

The matter proposed herein will affect insurance companies and therefore will not affect small business (Gov. Code Section 11342.610(b)(2)).

**SPECIFIC TECHNOLOGIES OR EQUIPMENT**

The proposal would not mandate the use of specific technologies or equipment.

**ALTERNATIVES**

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

**PLAIN ENGLISH**

The proposed amendments describing the changes are plain English.

**TEXT AND INITIAL STATEMENT OF REASONS**

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments, in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details of CAARP's proposed amendments are on file with the Commissioner and available for review as set forth below.

**FINAL STATEMENT OF REASONS**

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**ACCESS TO RULEMAKING FILE**

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental informa-

tion contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

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#### AVAILABILITY OF MODIFIED TEXT

With the exception of nonsubstantive or grammatical changes, if the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the regulations.

### TITLE 10. DEPARTMENT OF INSURANCE

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

**RH05047240**

**January 16, 2007**

#### **NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING LOW COST AUTOMOBILE INSURANCE PROGRAM PLAN OF OPERATIONS**

#### SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner will hold a public hearing to consider proposed amendments to Section 8 of the California Low Cost Automobile Insurance Program.

#### AUTHORITY TO ADOPT RATES AND REFERENCE

The Insurance Commissioner proposes changes to the California Low Cost Automobile Insurance Program Plan of Operations, referenced in Title 10, Chapter 5, Subchapter 3, Article 8, Section 2498.6 of the California Code of Regulations, pursuant to the authority vested in him by California Insurance Code Sections 11620, 11624, 11629.7, 11629.79, 11629.9 and 11629.99. The purpose of these amendments is to implement, interpret, and make specific the provisions of California Insurance Code Sections 11623.5, 11629.7, 11629.71, 11629.74, 11629.79, 11629.9, 11629.91, 11629.94 and 11629.99.

#### HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed amendments at the following date, time, and place:

**Date and Time:** **April 19, 2007  
10:00 a.m.**

**Location:** **45 Fremont Street  
22<sup>nd</sup> Floor Hearing Room  
San Francisco, California 94105**

#### ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

#### WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed amendments prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Legal Division  
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The backup agency contact person for this proceeding will be:

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All persons are invited to present oral and/or written testimony at the scheduled public hearing.

#### DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on April 19, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Written comments shall be submitted by one method only.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST

Statistical agents provide AIPSO with voluntary base data in accordance with the requirements stipulated in the AIPSO statistical program. Voluntary data for private passenger type vehicles written on commercial auto policies is reported as commercial data to statistical agents. However, for AIPSO purposes, statistical agents must reclassify this data and submit the data as voluntary private passenger nonfleet for use in quota determinations.

The proposed amendment would transfer voluntary base data for private passenger type vehicles written on commercial auto policies from the voluntary private passenger base data to the voluntary commercial base data.

Paragraph A.1 would include a definition of Voluntary Private Passenger Nonfleet Net Direct written Car Years for 2007 and subsequent quotas that state Voluntary Private Passenger Nonfleet Liability Net Direct Written Car Years will include only car years written under a personal auto policy of any type.

#### COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

#### LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

#### MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

#### COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS  
OR ENTITIES

The Commissioner has initially determined that the proposal will not impact businesses, but will have a potential cost impact on private persons directly affected.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business (Gov. Code Section 11342.610(b)(2)).

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed amendments describing the changes are plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments, in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details of CAARP's proposed amendments are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

The final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS  
ON THE INTERNET

The Initial Statement of Reasons and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

AVAILABILITY OF MODIFIED TEXT

With the exception of nonsubstantive or grammatical changes, if the Department makes modifications which are sufficiently related to the originally proposed text, it

will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the regulations.

**Location:**           **45 Fremont Street**  
                          **22<sup>nd</sup> Floor Hearing Room**  
                          **San Francisco, California 94105**

**TITLE 10. DEPARTMENT OF  
INSURANCE**

**ACCESS TO HEARING ROOM**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**RH06091118**

**January 16, 2007**

**WRITTEN AND/OR ORAL COMMENTS:  
AGENCY CONTACT PERSON**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING REGARDING  
LOW COST AUTOMOBILE INSURANCE  
PROGRAM PLAN OF OPERATIONS**

All persons are invited to submit written comments to the Insurance Commissioner on the proposed amendments prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

**SUBJECT OF HEARING**

California Insurance Commissioner Steve Poizner will hold a public hearing to consider proposed amendments to Section 8 of the California Low Cost Automobile Insurance Program.

Mike Riordan, Staff Counsel  
California Department of Insurance  
Legal Division  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (415) 904-5490

**AUTHORITY TO ADOPT RATES  
AND REFERENCE**

The Insurance Commissioner proposes changes to the California Low Cost Automobile Insurance Program Plan of Operations, referenced in Title 10, Chapter 5, Subchapter 3, Article 8, Section 2498.6 of the California Code of Regulations, pursuant to the authority vested in him by California Insurance Code Sections 11620, 11624, 11629.7, 11629.79, 11629.9 and 11629.99. The purpose of these amendments is to implement, interpret, and make specific the provisions of California Insurance Code Sections 11623.5, 11629.7, 11629.71, 11629.74, 11629.79, 11629.9, 11629.91, 11629.94 and 11629.99.

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[MohrE@insurance.ca.gov](mailto:MohrE@insurance.ca.gov)  
Telephone: (415) 538-4112  
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

**HEARING DATE AND LOCATION**

**DEADLINE FOR WRITTEN COMMENTS**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed amendments at the following date, time, and place:

**Date and Time:** **April 19, 2007**  
**10:00 a.m.**

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on April 19, 2009**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Written comments shall be submitted by one method only.

## ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492–3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Plan of Operations currently does not require that an insurer must notify an insured that any premium refund must be applied to any outstanding balance due on a current The current Plan rule does not comply with AB 1043's notice procedure relating to the return of unearned premium funds checks.

Sections 26 and 37 will be amended to require that if the assigned insurer or servicing carrier applies premium refunds to any outstanding balance due on the in force LCA policy or reduces the renewal deposit the insurer must notify the insured, in writing, that the premium refund has applied. Also the time frame for the issuance of premium refund checks for cancellation and endorsements has been changed from 30 calendar days to 25 business days.

Section 1 of the LCA Plan of Operations does not distinguish business days from days. The Plan will be amended to introduce the definition of business day.

The current limitation on the volume of LAD business a servicing company may write was introduced to attract new companies and to increase completion. However it was discovered that the limitation in fact restricted competition. Section 8 would be amended to enhance the administration of the limitation on the volume of LCA LAD assignments a LAD servicing company may write. The definition of an active servicing company is revised to state that in order to be considered an active servicing company, the servicing compa-

ny must have a LCA LAD market share of 10% or greater. In addition the market share of available eligible LCA LAD buy-out company's component of the formula is expanded to include companies with market shares greater than 5% who were granted exceptions to buy-out. The guideline for adoption of the limitation procedure has been increased to an estimate Low Cost Program private passenger nonfleet AIP premium volume that exceeds \$5 million.

The current LAD provision for the transfer of the buy-out company's book of in force LCA business to the servicing company must reflect the procedures currently used by servicing companies. The amendment will clarify the procedure for the transfer of the buy-out company's in force LCA policies. A buy-out company may transfer its book of in force policies to the LAD servicing company if agreed upon in the LAD buy-out contract. For the buy-out company's in force LCA business that is transferred to the servicing company upon expiration of the current LCA policy, the LAD servicing company will issue a renewal quotation. If the quotation is accepted by the insured, the LAD servicing company will issue a LCA policy.

## COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

## LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

## MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

## COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state

agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS  
OR ENTITIES

The Commissioner has initially determined that the proposal will not impact businesses, but will have a potential cost impact on private persons directly affected.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business (Gov. Code Section 11342.610(b)(2)).

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed amendments describing the changes are plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments, in addition to the Informative Digest included in this notice. The Initial Statement of Reasons the express terms of the proposed action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details of CAARP's proposed amendments are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

The final state of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS  
ON THE INTERNET

The Initial Statement of Reasons and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

**AVAILABILITY OF MODIFIED TEXT**

With the exception of nonsubstantive or grammatical changes, if the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the regulations.

**TITLE 10. DEPARTMENT OF INSURANCE**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

**RH05047242**

**January 16, 2007**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING REGARDING  
REVISIONS TO CALIFORNIA AUTOMOBILE  
ASSIGNED RISK PLAN**

**SUBJECT OF HEARING**

California Insurance Commissioner Steve Poizner will hold a public hearing to address the proposed amendments to Section 8 California Automobile Assigned Risk Plan (CAARP) Plan of Operations.

**AUTHORITY TO ADOPT RATES AND  
PROCEDURES AND REFERENCE**

The Insurance Commissioner proposes changes to the California Assigned Risk Automobile Plan Plan of Operations, referenced in Title 10, Chapter 5, Subchapter 3, Article 8, Section 2498.4.9 of the California Code of Regulations, pursuant to the authority vested in him by California Insurance Code Sections 11620 and 11624.

**HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

**Date and Time: April 19, 2007  
10:00 a.m.**

**Location:**

**California Department of Insurance  
45 Fremont Street  
22<sup>nd</sup> Floor Hearing Room  
San Francisco, California 94105**

**ACCESS TO HEARING ROOM**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS:  
AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposal prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[mohre@insurance.ca.gov](mailto:mohre@insurance.ca.gov)  
Telephone: (415) 538-4112  
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

**DEADLINE FOR WRITTEN COMMENTS**

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on April 19, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

**ADVOCACY OR WITNESS FEES**

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492–3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

Currently, voluntary base data for private passenger type vehicles (PPTs) written on commercial auto policies is included in the private passenger base data used to determine private passenger non fleet quotas. Statistical agents provide AIPSO with voluntary base data in accordance with the requirements stipulated in the AIPSO statistical program. Voluntary data for private passenger type vehicles written on commercial auto policies is reported as commercial data to statistical agents. However, for AIPSO purposes, statistical agents must reclassify this data and submit the data as voluntary private passenger nonfleet for use in quota determination.

The proposed amendment would transfer voluntary base data for private passenger type vehicles written on commercial auto policies from the voluntary private passenger base data to the voluntary commercial base data.

Paragraph A.1 would include a definition of Voluntary Private Passenger Nonfleet Net Direct written Car Years for 2007 and subsequent quotas that state Voluntary Private Passenger Nonfleet Liability Net Direct Written Car Years will include only car years written under a personal auto policy of any type.

**COMPARABLE FEDERAL LAW**

There are no comparable existing federal regulations or statutes.

**LOCAL MANDATE DETERMINATION**

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

**MANDATES ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS OR COSTS WHICH  
MUST BE REIMBURSED PURSUANT TO  
GOVERNMENT CODE SECTIONS  
17500 THROUGH 17630**

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

**COST OR SAVINGS TO ANY STATE  
AGENCY; FEDERAL FUNDING**

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

**SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE**

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

**COST IMPACT ON PRIVATE PERSONS  
OR ENTITIES**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

## IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2)).

## SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

## ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

## TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and the express terms of the proposed action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

## FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

## ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

## AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

## AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

## AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

## TITLE 13. DEPARTMENT OF MOTOR VEHICLES

### NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to amend Section 440.04, Occupational Licensing and Disciplinary Guidelines in Chapter 1, Division 1, Article 6.1 of Title 13, California Code of Regulations.

### PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly autho-

rized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

#### DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on April 2, 2007, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

#### AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code section 1651, in order to implement, interpret or make specific Government Code sections 11400.20, 11340.5 and 11425.50(e), and Vehicle Code sections 11100 through 11909.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code sections 11100 through 11909 provide for the Occupational Licensing Operations and Inspections Program to license, monitor and control a wide range of motor vehicle related businesses and individuals to ensure that consumers are dealing with reputable individuals and receiving the product that is represented to them. The department oversees close to 130,000 business firms and individuals for licensing compliance of laws, rules and regulations. Oversight is performed by inspectors located throughout the state.

The department may refuse to issue a license to any applicant who has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications or duties of the licensed activity. When a license is refused or discipline is imposed on an occupational licensee, the action is taken on an administrative level and taken before an administrative law judge if necessary.

For purposes of an administrative adjudication proceeding, and disciplinary action, an occupational license includes a business license issued by the department to: a vehicle dealer, lessor-retailer, dismantler,

manufacturer, re-manufacturer, distributor, driving school, traffic violator school, registration service, all-terrain vehicle safety training organization, or transporter; and an individual license issued to: a salesperson, driving school operator or instructor, traffic violator school administrator, operator, or instructor, vehicle verifier, all-terrain vehicle safety instructor, or a vehicle representative.

Government Code section 11400.20 provides that an agency may adopt interim or permanent regulations to govern adjudicative proceedings. The department proposes to amend Section 440.04, the guidelines entitled "Occupational Licensing and Disciplinary Guidelines."

#### DOCUMENTS INCORPORATED BY REFERENCE

The following document is incorporated by reference in Section 440.04. This document is not published in the California Code of Regulations, because it would be impractical and cumbersome to publish this document in the Code of Regulations:

Occupational Licensing and Disciplinary Guidelines (Rev. 11/2006)

The guidelines are available to the public.

#### FISCAL IMPACT STATEMENT

- Cost Or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Housing Costs: None.

#### DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in support of this proposal.

- The adoption of this regulation will neither create nor eliminate jobs or businesses in the state of California, will not result in the elimination of existing businesses, and will neither reduce nor expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses because the regulations will update the Occupational Licensing Guidelines.

#### PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

#### ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

#### CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Maria Grijalva, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-9001, or [mgrijalva@dmv.ca.gov](mailto:mgrijalva@dmv.ca.gov). In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or e-mail [dbaity@dmv.ca.gov](mailto:dbaity@dmv.ca.gov). The fax number for the Regulations Branch is (916) 657-1204.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the initial statement of reasons and final statement of reasons, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons and Express Terms) may be accessed at [www.dmv.ca.gov](http://www.dmv.ca.gov), Other Services, Legal Affairs Division, Regulatory Actions web page.

#### AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

### TITLE 13. DEPARTMENT OF MOTOR VEHICLES

#### NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to amend Sections 345.02, 345.06, 345.21 and 345.22 in Chapter 1, Division 1, Article 4.7 of Title 13, California Code of Regulations, Schools for Traffic Violators.

#### PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly autho-

rized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

#### DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M., April 2, 2007, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

#### AUTHORITY AND REFERENCE

The department proposes to adopt this regulation under the authority granted by section 1651, 1652, 1665, 11202(a)(2) and 11219 of the Vehicle Code, and section 17520, Family Code in order to implement, interpret or make specific sections 626, 626.2, 626.4, 626.6, 626.8, 1665, 1668(b), 1671, 11200, 11202, 11202.5, 11204, 11206, 11206.5, 11207, 11208, 11210, 11211, and 11213 Vehicle Code; and section 17520, Family Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code sections 11200, 11202.5 and 11206 authorize the department to license and regulate traffic violator schools, instructors and operators. Vehicle Code section 1652 authorizes the department to prescribe forms deemed necessary for the purposes of implementing the Vehicle Code. Existing law prohibits the operation of a traffic violator school without licensure. Traffic violator school instructors are prohibited from acting as a traffic violator school instructor, or from providing instruction to traffic violators without a current valid instructor's license. A person is prohibited from acting as a traffic violator school operator without a valid license issued by the department.

The proposed amendments to Sections 345.02, 345.06, 345.21 and 345.22 will update two forms currently used in the Traffic Violator School Program, the Application for Instructor's License Traffic Violator School (TVS), OL 710 (Rev 8/2005), and the Application for Change: TVS Operator License, OL 755 (Rev 4/93), to reflect changes in revisions dates and changes to the forms.

#### FISCAL IMPACT STATEMENT

- Cost or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulatory action changes two forms.
- Effect on Housing Costs: None.

#### DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- The adoption of this regulation is not expected to create or eliminate jobs or businesses in the state of California or reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action may affect small businesses and entities with little or no impact. Traffic violator school instructors would have a new application form to use when applying for an original license. Traffic violator school operators will report an address change on a department form. Existing licensees would not be impacted.

#### PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

## ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

## CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Maria Grijalva, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-9001 or [mgrijalva@dmv.ca.gov](mailto:mgrijalva@dmv.ca.gov). In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or [dbaity@dmv.ca.gov](mailto:dbaity@dmv.ca.gov). The fax number for the Regulations Branch is (916) 657-1204.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeouts to indicate deletions from the California Code of Regulations. The contact person identified in this notice shall also make available to the public, upon request, the final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons and Express Terms) may be accessed at [www.dmv.ca.gov](http://www.dmv.ca.gov). Other Services, Legal Affairs Division, Regulatory Actions Web Page.

## AVAILABILITY OF MODIFIED TEXT

Following the written comment period and the hearing, if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full, modified text with changes clearly indicated would be made

available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

## TITLE 13. DEPARTMENT OF MOTOR VEHICLES

### NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to adopt Section 150.08, in Chapter 1, Division 1, Article 3.0, of Title 13, California Code of Regulations to identify a new type of manufactured vehicle.

### PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

### DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on *April 2, 2007*, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

### AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code section 1651, in order to implement, interpret or make specific Sections 260 and 655 of the Vehicle Code.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department of Motor Vehicles (department) relies on Vehicle Code statutes when registering a vehicle

as passenger or commercial. Both terms “passenger” (CVC section 465) and “commercial” (CVC section 260) are defined in the Vehicle Code. Confusion at the department’s field offices may occur when truck tractors with living quarters have been interpreted by customers to be considered “housecars”, which are passenger vehicles.

Customers and some car dealers are misidentifying truck tractors with living quarters as passenger vehicles. The Vehicle Code does not expressly comment on this specific condition. To clarify this misunderstanding and provide written documentation which standardizes the department’s policy, the department proposes the following regulation.

#### **§150.08 Truck Tractors with Living Quarters.**

Section 150.08 is proposed to be adopted to identify and make specific that truck tractors manufactured or modified to include living quarters are to be considered commercial vehicles.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

There are no documents to be incorporated by reference for this regulatory action.

#### **FISCAL IMPACT STATEMENT**

- Cost Or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulation would identify motor vehicles which have truck tractor bodies, initially manufactured or later modified to include living quarters, as commercial motor vehicles.
- Effect on Housing Costs: None.

#### **DETERMINATIONS**

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in support of this proposal.
- The adoption of this regulatory action will neither create, eliminate jobs or create businesses in the state of California, will not result in the elimination of existing businesses, and will not reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses because the proposed regulation would identify motor vehicles which have truck tractor bodies, initially manufactured or later modified to include living quarters, as commercial motor vehicles.

#### **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

#### **ALTERNATIVES CONSIDERED**

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be effective as and less burdensome to affected private persons than the proposed action.

#### **CONTACT PERSON**

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Christie Patrick, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-5567, or [cpatrick@dmv.ca.gov](mailto:cpatrick@dmv.ca.gov). In the absence of the department representative, inquiries may be directed to the Regula-

tions Coordinator, Deborah Baity, at (916) 657-5690 or e-mail [dbaity@dmv.ca.gov](mailto:dbaity@dmv.ca.gov). The fax number for the Regulations Branch is (916) 657-1204.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the final statement of reasons, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons and Express Terms) may be accessed at [www.dmv.ca.gov/about/lad/regactions.htm](http://www.dmv.ca.gov/about/lad/regactions.htm).

#### AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

### TITLE 14. FISH AND GAME COMMISSION

#### Notice of Proposed Changes in Regulations

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 215, 219, 220, and 315 of the Fish and Game Code and to implement, interpret or make specific sections 215, 219, and 220 of said Code, proposes to add Section 721, Title 14, California Code

of Regulations, relating to suspension of flow requirements from Grizzly Valley Dam at Lake Davis.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Fish and Game Code (FGC) Section 5937 requires that sufficient water be supplied through or around a dam to keep in good condition any fish that may be planted or exist below the dam. In addition, FGC subsection 219(a) allows the Fish and Game Commission (Commission) to adopt regulations that supersede any Code section for the protection of fish, wildlife, and other natural resources under the jurisdiction of the Commission.

The Department of Fish and Game (Department) has proposed to eradicate northern pike from Lake Davis (Plumas County) and all of its tributaries to re-establish the trout fishery at Lake Davis and to prevent the pike from escaping from the reservoir and causing adverse ecological impacts, such as those that have occurred at Lake Davis, in other parts of the State or region. A joint EIR/EIS was prepared by the Department and the U.S. Forest Service for the proposed Lake Davis Pike Eradication Project and made available for public comment. The 45-day public comment period ended October 16, 2006. Seven alternatives were proposed including: a no project/no action alternative; five alternatives using the chemical piscicide rotenone at various reservoir water levels; and a no chemical alternative that calls for complete dewatering of the reservoir and its tributaries.

As of the date of this Initial Statement of Reasons, a project involving the use of rotenone has not been approved. However, if one is approved, the Department would request the Commission adopt a regulation to temporarily supersede FGC Section 5937 for the specific and limited purpose of implementing the project to eradicate pike, which would protect fish, wildlife, and other natural resources under the jurisdiction of the Commission. Because of the time it would take for the Commission to notice, consider, and potentially adopt such a regulation, this Initial Statement of Reasons has been prepared prior to the approval of a pike eradication project and the application of any such regulation would be limited to an approved project. If the Department approves such a project, the outlet valve in Grizzly Valley Dam would be closed for at least five days and potentially up to a total of 45 days following application of rotenone to the reservoir waters, depending on which neutralization option is permitted. Closing the outlet valve would result in dewatering Big Grizzly Creek for at least a 400-yard reach downstream where accretion flows appear. This proposal requests that the Commission temporarily supersede FGC Section 5937 specifi-

cally for Grizzly Valley Dam to aid the eradication of pike from Lake Davis and its tributaries.

Whether or not Fish and Game Code Section 5937 applies to the unique circumstances of the proposed pike eradication project is a question the resolution of which would involve complex biological, technical and legal issues. This proposed regulation is a cautionary approach that is intended to minimize the risk of delay from legal challenges that could delay implementation of an approved project for weeks to a point in time when seasonal conditions are not ideal, as was the case in 1997, or for another year until reservoir levels and seasonal conditions are optimal for an effective treatment (assuming pike have not escaped Lake Davis in the meantime, and the Department has the ability and opportunity to implement an eradication project in a future year). Given the ever-increasing pike population, the increasing incidence of anglers catching pike, recent known incidents of anglers moving live pike, and the potential for spilling of the dam in extremely wet years, the Department believes it is critical to minimize the risk of delay.

Therefore, this proposal is requested to be considered in the Commission's early 2007 schedule. It is anticipated that the Department will make a decision about which project alternative to authorize prior to the Commission's March meeting.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Humboldt State University, Nelson Hall West, Goodwin Forum, 1 Harpst Street, Arcata, California, on March 2, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Bodega Bay Marine Laboratory Lecture Hall, 2099 Westside Road, Bodega Bay, California, on April 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 6, 2007 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 9, 2007. All comments must be received no later than April 13, 2007, at the hearing in Bodega Bay, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are

on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Dr. Ed Pert, Lake Davis Pike Eradication Project Leader, Department of Fish and Game, phone (916) 445-3616, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This regulation proposal only affects a 400-yard reach of Big Grizzly Creek from 5 to 45 days.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

#### Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **TITLE 14. FISH AND GAME COMMISSION**

### **Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315, 316.5 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215 and 316.5, of said Code, proposes to amend Section 5.51 and add subsection 7.50(b)(53.8), Title 14, California Code of Regulations, relating to Lake Davis sport fishing.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Current sport fishing regulations for Lake Davis, Plumas County, are governed by the Sierra District general regulations, which allow for an open season all year with a daily bag limit of five trout and ten in possession. Also, current statewide regulations require that any

northern pike taken by an angler must be immediately killed and retained until the Department is notified and collects the northern pike. The Department must be notified by the angler within 24 hours that a northern pike was taken.

The California Department of Fish and Game (Department) is considering a project to eradicate northern pike (*Esox lucius*) from Lake Davis in the fall of 2007. As of the date of this Initial Statement of Reasons, a project has not been approved. However, if one is approved that involves the use of rotenone, the Department would request the Commission adopt a regulation to modify the existing trout fishery regulation for Lake Davis, Plumas County, and the northern pike regulation for the State. The proposed regulation changes would: 1) temporarily increase the daily bag limit from five to ten trout per day, and 2) require any northern pike caught at Lake Davis, or its tributaries, to be immediately killed and returned to the tributary or lake, rather than be killed and turned in to the Department. The proposed effective date is May or June (or as soon as the regulatory process allows) and extend through a date between September 1 and October 15, 2007 whichever period of time in 2007 that would most appropriately fit with the project timeline. The possession limit would remain at ten trout. [Note: The exact ending date for the liberalized daily bag limit will be known by the Commission's March meeting, if a rotenone project is approved]. If a pike eradication project is implemented at Lake Davis, the proposed regulation that requires anglers to immediately kill and return to the lake any northern pike caught instead of being turned in to the Department would expire between September 1 and October 15, 2007 and the statewide pike regulation would again be in effect. Because of the time it would take for the Commission to notice, consider, and potentially adopt such a regulation, this regulatory proposal is being made prior to the approval of a pike eradication project and the effect of any such regulation would be contingent upon the approval of a project.

If the Department approves and implements a project to treat Lake Davis with a piscicide to eradicate northern pike, an illegally introduced species, most other fish species within the reservoir will also die. The liberalized limit for trout in the reservoir will allow for maximum use of this resource by anglers, which would otherwise be lost. The change in the pike regulation would still require that any pike caught in any water of California, other than Lake Davis, be killed immediately and turned in to the Department. At Lake Davis, an angler would not be allowed to possess a pike and the pike would have to be immediately killed and returned to the water.

Other species of game fish in the reservoir occur in low numbers and a regulation change for them would

not result in any substantial benefit for anglers targeting these species at Lake Davis. Therefore, there are no changes proposed that would liberalize the bag limits for species other than trout. The Department does not recommend regulation changes that would allow anglers to possess pike, as any liberalization of these regulations could have the effect of people moving live pike out of Lake Davis. The movement of live pike has occurred under the current regulations. Liberalizing the pike regulations would likely exacerbate this problem.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Humboldt State University, Nelson Hall West, Goodwin Forum, 1 Harpst Street, Arcata, California, on March 2, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Bodega Bay Marine Laboratory Lecture Hall, 2099 Westside Road, Bodega Bay, California, on April 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 6, 2007 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 9, 2007. All comments must be received no later than April 13, 2007, at the hearing in Bodega Bay, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Dr. Ed Pert, Lake Davis Pike Eradication Project Leader, Department of Fish and Game, phone (916) 445-3616, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) **Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:**  
The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This proposal provides more angling opportunity.
- (b) **Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:** None.
- (c) **Cost Impacts on a Representative Private Person or Business:**  
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) **Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:** None.
- (e) **Nondiscretionary Costs/Savings to Local Agencies:** None.

- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## TITLE 14. FISH AND GAME COMMISSION

### Notice of Proposed Changes in Regulations

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, 203.1, 331, 332, 1050, 1572, 3452, 3453, 4005, 4009.5, 4751, 4902 and 10502 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 203, 203.1, 207, 331, 332, 460, 713, 1050, 1570–1572, 1801, 3452, 3453, 3800, 3950, 3951, 4005, 4009.5, 4330–4333, 4336, 4751, 4756, 4800–4805, 4902, 10500 and 10502 of said Code, proposes to amend Sections 353 and 475, Title 14, California Code of Regulations, relating to Mammal Hunting — Method of Take Regulations.

Pursuant to the provisions of sections 203 and 203.1 of the Fish and Game Code, the Fish and Game Commission will consider populations, habitat, the welfare of individual animals, and other pertinent facts and testimony in adopting areas of take, and prescribe the manner and means of taking as part of the 2007–2008 Mammal Hunting Regulations.

At the Fish and Game Commission’s meeting on February 2, 2007, the Department of Fish and Game made the following recommendations for changes relative to game mammal regulations for the 2007–2008 seasons: proposes to amend sections 353 and 475, Title 14, California Code of Regulations, regarding methods authorized for taking big game and methods of take for nongame birds and nongame mammals.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

#### **Amend Section 353, Title 14, CCR, Re: Methods Authorized for Taking Big Game**

The existing regulations provide for methods to be used to take big game. Traditionally, bullets containing lead have been used for taking big game. The regulation change proposed here would require non–lead bullets, muzzleloader balls, and/or shotgun slugs for the taking of big game mammals in the geographic area inhabited by free–ranging California condors. This area is identified in existing regulation by the boundaries established as deer hunt zones as the South Unit A Deer zone, and all of deer zones D9, D10, D11, and D13.

Alternatives to the proposed action are “no change” to existing regulation; requiring non–lead ammunition throughout the recognized California condor range; and requiring non–lead bullets statewide.

In the past two decades, State, federal, and non–profit organizations have diligently worked to save and reintroduce the endangered California condor into the wilds of its former range. These conservation efforts, including substantial research investigations, have resulted in the determination that lead toxicity/lead poisoning is a factor affecting condor health and survival. The Department mission is to conserve California’s wildlife for use and enjoyment by the citizens of the State. Reducing the risk to the condor of lead poisoning through big game hunting activities is the intent of this regulation change.

Based on information currently available, the Department does not believe that requiring the use of non–lead ammunition for the hunting of big game in California condor range will cause any fundamental changes to the operation of the Department’s Wildlife Programs, as evidenced by the change to non–lead shot for waterfowl hunting in California several years ago. The proposal requires hunters in the specified area of the state inhabited by free–ranging California condor to use non–lead containing bullets, muzzleloader balls, and/or shotgun slugs for the taking of big game.

#### **Amend Section 475, Title 14, CCR, Re: Methods of Take for Nongame Birds and Nongame Mammals**

The existing regulations provide for methods to be used, as well as methods prohibited, for the take of nongame birds and nongame mammals. Traditionally, bullets made of lead have been used for take of many nongame birds and nongame mammals. The regulation change proposed here would require that centerfire bullets, muzzleloading balls, slugs and buckshot used for the take of nongame birds and nongame mammals in the

geographic area inhabited by the California condor be non-lead bullets. This area is identified in existing regulation by the boundaries established as deer hunt zones as the South Unit A Deer zone, and all of deer zones D9, D10, D11, and D13.

Alternatives to the proposed action are “no change” to existing regulation; requiring non-lead bullets (for the above methods only) throughout the recognized California condor range; and requiring non-lead bullets (for the above methods only) statewide.

In the past two decades, State, federal, and non-profit organizations have diligently worked to save and reintroduce the endangered California condor into the wilds of its former range. These conservation efforts, including substantial research investigations, have resulted in the determination that lead toxicity/lead poisoning is a factor affecting condor health and survival. The Department mission is to conserve California’s wildlife for use and enjoyment by the citizens of the State. Reducing the risk to the condor of lead poisoning through big game hunting activities is the intent of this regulation change.

Based on information currently available, the Department does not believe that requiring the switching to non-lead ammunition for the hunting of nongame birds and nongame mammals in California condor range will cause any fundamental changes to the operation of the Department’s Wildlife Programs, as evidenced by the change to non-lead shot for waterfowl hunting in California several years ago. The proposal requires that centerfire bullets, muzzleloading balls, slugs and buckshot used for the take of nongame birds and nongame mammals in the geographic area inhabited by the California condor, be non-lead bullets.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Humboldt State University, Nelson Hall West, Goodwin Forum, 1 Harpst Street, Arcata, California on Friday, March 2, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Bodega Bay Marine Laboratory, Lecture Hall, 2099 Westside Road, Bodega Bay, California on Friday, April 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 6, 2007, at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 9, 2007. All comments must be received no later than April 13, 2007, at the hearing in Bodega Bay, CA. If you would

like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Craig Stowers, Wildlife Programs Branch, phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

Sections 353 and 475

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Businesses relying on the sale of lead bullets also have the capability to sell non-lead bullets. These businesses will still have the capability to sell lead bullets for use in other activities than the proposed regulation changes such as target shooting, hunting big game elsewhere in California, or hunting in other states. A similar circumstance, when hunting of waterfowl switched from lead shot to non-lead shot, supports the contention that there will be no significant adverse economic impact on business.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:  
A private person or business will be required to pay a new fee pursuant to proposed regulations geared to recover the department's cost of administering the program.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

**Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business.

**Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or

would be as effective and less burdensome to affected private persons than the proposed action.

**TITLE 14. FISH AND GAME  
COMMISSION**

**Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, 203.1, 331, 332, 1050, 1572, 3452, 3453, 4005, 4009.5, 4751, 4902 and 10502 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 203, 203.1, 207, 331, 332, 460, 713, 1050, 1570–1572, 1801, 3452, 3453, 3800, 3950, 3951, 4005, 4009.5, 4330–4333, 4336, 4751, 4756, 4800–4805, 4902, 10500 and 10502 of said Code, proposes to amend Sections 360, 361, 362, 363, 364, 702 and 708, Title 14, California Code of Regulations, relating to Mammal Hunting Regulations.

Pursuant to the provisions of sections 203 and 203.1 of the Fish and Game Code, the Fish and Game Commission will consider populations, habitat, food supplies, the welfare of individual animals, and other pertinent facts and testimony in adopting season, bag and possession limits, and areas of take, and prescribe the manner and means of taking as part of the 2007–2008 Mammal Hunting Regulations.

At the Fish and Game Commission's meeting on February 2, 2007, the Department of Fish and Game made the following recommendations for changes relative to game mammal regulations for the 2007–2008 seasons: proposes to amend sections 360, 361, 362, 363, 364, 702 and 708, Title 14, California Code of Regulations, to make tag quota changes, clarifications, and urgency changes for the 2007–2008 Mammal Hunting Regulations.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

**Amend Subsection 360(a), Title 14, CCR, Re:  
Deer: A, B, C and D Zone Hunts**

Existing regulations provide for the number of license tags available for the A, B, C, and D Zones. This regulatory proposal changes the number of tags for all existing zones to a series of ranges presented in the following table. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and overwinter adult survival, final tag quotas may fall below the proposed range.

Deer: § 360(a) A, B, C, and D Zone Hunts Tag Allocations		
Zone	Current	Proposed
A	65,000	30,000–65,000
B	55,500	35,000–65,000
C	9,025	5,000–15,000
D3–5	33,000	30,000–40,000
D–6	10,000	6,000–16,000
D–7	9,000	4,000–10,000
D–8	8,000	5,000–10,000
D–9	2,000	1,000–2,500
D–10	700	400–800
D–11	5,500	2,500–6,000
D–12	950	100–1,500
D–13	4,000	2,000–5,000
D–14	3,000	2,000–3,500
D–15	1,500	500–2,000
D–16	3,000	1,000–3,500
D–17	500	100–800
D–19	1,500	500–2,000

**Amend Subsection 360(b), Title 14, CCR, Re:  
Deer: X–Zone Hunts**

Existing regulations provide for the number of hunting tags for the X zones. The proposal changes the number of tags for all existing zones to a series of ranges

presented in the following table. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and overwinter adult survival, final tag quotas may fall below the proposed range.

Deer § 360(b) X –Zone Hunts Tag Allocations		
Zone	Current	Proposed
X-1	2,325	1,000–6,000
X-2	180	50–500
X-3a	295	100–1,200
X-3b	840	200–3,000
X-4	435	100–1,200
X-5a	70	25–200
X-5b	155	50–500
X-6a	325	100–1,200
X-6b	415	100–1,200
X-7a	220	50–500
X-7b	100	25–200
X-8	300	100–750
X-9a	750	100–1,200
X-9b	325	100–600
X-9c	325	100–600
X-10	400	100–600
X-12	805	100–1,200

**Amend Subsection 360(c), Title 14, CCR, Re:  
Deer: Additional Hunts**

Existing regulations for Additional Hunt G-8 (Fort Hunter Liggett Antlerless Deer Hunt) provide for hunting on Saturdays, Sundays, and the Columbus Day holiday only beginning the first Saturday in October and extending for two consecutive weekends. The Base has specifically requested the season be modified to begin on the Thursday preceding the Columbus Day weekend and run for five consecutive days to accommodate Base operations and other hunt opportunities. The proposal would modify the season by consolidating a hunt season consisting of two weekends and a holiday into a five consecutive day season in order to accommodate other hunts and Base operations. No loss of hunter opportunity would result from this action and the proposal is con-

sistent with existing deer herd management plan recommendations.

Existing regulations for Additional Hunt G-10 (Camp Pendleton Either-Sex Deer Hunt) provide for hunting on Saturdays, Sundays, Columbus and Veteran's Day, and the day after Thanksgiving, beginning the third Saturday in September and continuing through the Thanksgiving Day weekend. Certain federal holidays occur on weekdays when the Base is normally closed and additional hunter opportunity has been lost. The Base has specifically requested: the season be lengthened by adding two weeks to the beginning of the season; one week to the end of the season; include all holidays and the day after Thanksgiving, in order to provide additional hunter opportunity. In addition, the Base has requested that additional weekdays be included at the discretion of the Commanding Officer for those days when military operations have been suspended or re-

duced. The proposal would modify the season to begin on the first Saturday in September and extend through the first Sunday in December; specifically include all holidays; and allow the Commanding Officer discretion, with Department concurrence, to provide additional hunt days on weekdays during the season should military operations be suspended. Special conditions are also adjusted to account for the additional three weeks added to the season. These actions would provide an increase in hunter opportunity as requested by the Base, while maintaining consistency with existing deer herd management plan recommendations.

Existing regulations for Additional Hunt J-10 (Fort Hunter Liggett Junior Either-Sex Deer Hunt) provide for hunting on Saturdays, Sundays, and the Columbus Day holiday only beginning the first Saturday in October and extending for two consecutive weekends. The Base has specifically requested the season be modified

by adding two days to the beginning of the season in order to provide additional junior hunting opportunity. The proposal would modify the season by adding two days to the beginning of the season (Thursday and Friday). These actions would result in increased hunter opportunity, and are consistent with existing deer herd management plan recommendations.

Existing regulations provide for the number of hunting tags for the additional hunts. The proposal changes the number of tags for existing hunts to a series of ranges presented in the following table. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and overwinter adult survival, final tag quotas may fall below the proposed range.

<b>Deer: § 360(c) Additional Hunts Tag Allocations</b>					
Hunt	Current	Proposed	Hunt	Current	Proposed
G-1	2,850	500-5,000	M-11	20	20-200
G-3	35	5-50	MA-1	150	20-150
G-6	50	25-100	MA-3	150	20-150
G-7	20 Military *	20 Military *	J-1	25	10-25
G-8	10 Military *	10 Military * and 10 Public	J-3	15	15-30
G-9	15 Military * 15 Public	15 Military * 15 Public	J-4	15	15-50
G-10	300 Military *	400 Military *	J-7	15	10-50
G-11	500 Military * and DOD **	500 Military * and DOD **	J-8	15	10-20
G-12	30	10-50	J-9	5	5-10
G-13	300	50-300	J-10	10 Military * 50 Public	10 Military * 75 Public
G-19	25	10-50	J-11	40	10-50
G-21	25	25-100	J-12	10	10-20
G-37	25	25-50	J-13	40	25-100
G-38	300	50-300	J-14	30	15-75
G-39	5	5-150	J-15	10	5-30

Deer: § 360(c) Additional Hunts Tag Allocations					
Hunt	Current	Proposed	Hunt	Current	Proposed
M-3	20	10-75	J-16	75	10-75
M 4	5	5-50	J-17	25	5-25
M-5	15	5-50	J-18	75	10-75
M-6	80	25-100	J-19	25	10-40
M-7	150	50-150	J-20	20	5-20
M-8	20	5-50	J-21	50	20-80
M-9	15	5-100			

\* *Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs.*

\*\* *DOD = Department of Defense*

#### **Amend Section 361, Title 14, CCR, Re: Archery Deer Hunting**

Existing regulations provide for a bag and possession limit for Hunt A-32 of one either-sex deer per tag. The current verbatim references the incorrect Title 14, CCR, subsection describing either-sex deer and is inconsistent and misleading. The proposal would correct the error by changing the subsection reference from subsection 351(b), Title 14, CCR; to the correct subsection reference, 351(c), Title 14, CCR thereby eliminating any conflict or confusion.

Existing regulations provide deer hunting area descriptions, seasons, bag and possession limits, and number of tags for Zone A. The zone currently provides limited late season archery deer hunting opportunities in the zone, Hunt A-32 (Ventura/Los Angeles Late Season Archery Either-Sex Deer Hunt). In an effort to increase opportunity for archery method hunters, provide a higher expectation of success, and meet public demand for increased hunter opportunity while meeting approved deer herd plan objectives, the proposal would establish a new late season archery hunt opportunity in Zone A on the Fort Hunter Liggett Military Base. The proposal creates a new Area-Specific Archery Hunt, A-33 (Fort Hunter Liggett Late Season Archery Either-Sex Deer Hunt). The area would include that por-

tion of Monterey County lying within the exterior boundaries of the Hunter Liggett Military Reservation, except as restricted by the Commanding Officer. The season would be open on Saturdays, Sundays and holidays only beginning the first Saturday in October and continuing through the Veteran's Day holiday in November, except if rescheduled by the Base Commander between the season opener and December 31 with Department concurrence. The bag and possession limit would be one, either-sex deer with a recommended tag quota range of 20-100 tags to be split between military only personnel, distributed by the Base; and the general public, distributed through Department drawing. Special conditions would include a tag refund exchange policies in case of hunt cancellation by the Commanding Officer. This proposal would meet an expressed public demand for increased late season and archery hunting opportunity, maintain appropriate harvest levels within the Hunter Liggett Military Reservation and Zone A deer herds, and be consistent with existing deer herd management plan recommendations.

Existing regulations provide for the number of hunting tags for existing area-specific archery hunts. The proposal changes the number of tags for existing hunts to a series of ranges presented in the following table. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and overwinter adult survival, final tag quotas may fall below the proposed range.

<b>Archery Deer Hunting: § 361 Tag Allocations</b>		
<b>Hunt Number (and Title)</b>	<b>Current</b>	<b>Proposed</b>
A-1 (C Zone Archery Only Tag)	2,045	150-3,000
A-3 (Zone X-1 Archery)	265	50-1,000
A-4 (Zone X-2 Archery)	10	5-100
A-5 (Zone X-3a Archery)	35	10-300
A-6 (Zone X-3b Archery)	90	25-400
A-7 (Zone X-4 Archery)	105	25-400
A-8 (Zone X-5a Archery)	20	15-100
A-9 (Zone X-5b Archery)	5	5-100
A-11 (Zone X-6a Archery)	55	10-200
A-12 (Zone X-6b Archery)	175	10-300
A-13 (Zone X-7a Archery)	30	10-200
A-14 (Zone X-7b Archery)	20	5-100
A-15 (Zone X-8 Archery)	25	5-100
A-16 (Zone X-9a Archery)	130	50-500
A-17 (Zone X-9b Archery)	300	50-500
A-18 (Zone X-9c Archery)	350	50-500
A-19 (Zone X-10 Archery)	120	25-200
A-20 (Zone X-12 Archery)	115	50-500
A-21 (Anderson Flat Archery Buck Hunt)	25	25-100
A-22 (San Diego Archery Either-Sex Deer Hunt)	1,000	200-1,500
A-24 (Monterey Archery Either-Sex Deer Hunt)	100	25-200
A-25 (Lake Sonoma Archery Either-Sex Deer Hunt)	35	20-75
A-26 (Bass Hill Archery Buck Hunt)	30	10-100
A-27 (Devil's Garden Archery Buck Hunt)	10	5-75
A-30 (Covelo Archery Buck Hunt)	40	20-100
A-31 (Los Angeles Archery Either-Sex Deer Hunt)	1,000	200-1,500

<b>Archery Deer Hunting: § 361 Tag Allocations</b>		
<b>Hunt Number (and Title)</b>	<b>Current</b>	<b>Proposed</b>
A-32 (Ventura/Los Angeles Archery Late Season Either-Sex Deer Hunt)	250	50-300
A-33 (Fort Hunter Liggett Late Season Archery Either-Sex Deer Hunt)	New	25 Military* and 25 Public

*\* Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs.*

**Amend Section 362, Title 14, CCR, Re: Nelson Bighorn Sheep**

Existing regulations provide for limited hunting of Nelson bighorn rams in seven hunt zones. The proposed

change adjusts the number of tags based on annual bighorn sheep population surveys conducted by the Department. The following proposed number of tags was determined using the procedure described in Fish and Game Code Section 4902:

<b>HUNT ZONE</b>	<b>NUMBER OF TAGS</b>
Zone 1 – Marble Mountains	4
Zone 2 – Kelso Peak/Old Dad Mountains	5
Zone 3 – Clark/Kingston Mountain Ranges	2
Zone 4 – Orocopia Mountains	0
Zone 5 – San Geronio Wilderness	1
Zone 6 – Sheep Hole Mountains	2
Zone 7 – White Mountains	5
Open Zone Fund-Raising Tags	2
<b>TOTAL</b>	21

The number of tags allocated for each of the seven hunt zones is based on the results of the Department's 2005 estimate of the bighorn sheep population in each zone. Tags are proposed to allow the take of less than 15 percent of the mature rams estimated in each zone.

**Amend Section 363, Title 14, CCR, Re: Pronghorn Antelope**

Existing regulations provide for the number of prong-

horn antelope hunting tags for each hunt zone. This proposed regulatory action would provide for tag allocation ranges for most hunt zones pending final tag quota determinations based on winter survey results that should be completed by March of 2007. The final tag quotas will provide for adequate hunting opportunities while allowing for a biologically appropriate harvest of bucks and does in specific populations. The proposed tag allocation ranges for the hunt zones are as set forth below.

Pronghorn Antelope Tag Allocation Ranges – 2007						
Hunt Area	Archery– Only Season		General Season			
			Period 1		Period 2	
	Buck	Doe	Buck	Doe	Buck	Doe
Zone 1 – Mount Dome	1–10	0–3	3–60	0–20	0	0
Zone 2 – Clear Lake	1–10	0–3	5–80	0–25	0	0
Zone 3 – Likely Tables	2–20	0–7	25–150	0–50	25–130	0–50
Zone 4 – Lassen	2–20	0–7	25–150	0–50	25–150	0–50
Zone 5 – Big Valley	1–15	0–5	3–150	0–50	0	0
Zone 6 – Surprise Valley	1–10	0	3–25	0–7	0	0
Big Valley Junior Hunt	N/A		1–15 Either–Sex		0	
Lassen Junior Hunt	N/A		1–15 Either–Sex		0	
Surprise Valley Junior Hunt	N/A		1–4 Either–Sex		0	
Fund–Raising Hunt	N/A		1–10 Buck			

Existing regulations allow Lassen junior antelope hunters to access the Honey Lake Wildlife Area. The proposed change for the closure of Honey Lake Wildlife Area to junior antelope hunters is necessary because of the substantial commitment of Department staff time and closure of the Wildlife Area to the public when antelope hunting occurs. Within the last three years no antelope have been taken at Honey Lake Wildlife Area.

Existing regulations stipulate when applications are due for the special hunt on the Peninsula “U” portion of the Clear Lake National Wildlife Refuge. The proposed change shifts the deadline for the application forward one week from the second Friday in August to the first Friday in August will provide significantly more time

for the Department to notify successful applicants and provide sufficient time for those applicants to plan their hunt.

#### **Amend Section 364, Title 14, CCR, Re: Elk**

Existing regulations specify elk license tag quotas for each hunt. In order to maintain hunting quality in accordance with management goals and objectives, it is periodically necessary to adjust quotas in response to dynamic environmental and biological conditions. This proposed amendment modifies elk tag numbers to ranges of tags to adjust for fluctuations in population numbers.

Periodic quota changes are necessary to maintain hunting quality in accordance with management goals and objectives.

<b>2007 Proposed Elk Tag Allocation</b>										
<b>Hunt Name</b>	<b>Antler-less</b>	<b>Either-Sex</b>	<b>Bull</b>	<b>Spike</b>	<b>Muzzle-loader Bull</b>	<b>Muzzle-loader Antler-less</b>	<b>Muzzle-loader either-sex</b>	<b>Archery Either-Sex</b>	<b>Archery Antler-less</b>	<b>Archery Bull</b>
<b>Roosevelt Elk</b>										
Siskiyou	0-30	0-30								
Del Norte	0-20		0-10							
Marble Mountains		0-80								
Marble Mtns Junior		0-4								
Klamath	0-20		0-20							
Big Lagoon		0-10								
NW California (new)		0-25								
<b>Rocky Mountain Elk</b>										
Rocky Mtn Elk										
Northeastern		0-20						0-10		
Northeastern Junior		0-4								
<b>Tule Elk</b>										
Cache Creek	0-4		0-4							
Cache Creek Junior-New			0-2							
<b>La Panza</b>										
Period 1	0-12		0-10							
Period 1 (Junior)			0-2							
Period 2	0-12		0-12							
<b>Owens Valley</b>										
<b>Bishop</b>										
Period 1 (new) Muzzleloader					0-10	0-30	0-10			
Period 2 (new) Junior	0-30	0-10	0-10							
Period 3 (new dates)	0-30	0-10	0-10							
Period 4 (old per 1)	0-30	0-10	0-10							
Period 5 (old per 3)	0-30	0-10	0-10							
<b>Independence</b>										
Period 1 (new) Archery								0-10	0-30	0-10
Period 2 (new)	0-30	0-10	0-10							

2007 Proposed Elk Tag Allocation										
Hunt Name	Antler-less	Either-Sex	Bull	Spike	Muzzle-loader Bull	Muzzle-loader Antler-less	Muzzle-loader either-sex	Archery Either-Sex	Archery Antler-less	Archery Bull
Period 3 (new dates)	0-30	0-10	0-10							
Period 4 (old per 1)	0-30	0-10	0-10							
Period 5 (old per 3)	0-30	0-10	0-10							
<b>Lone Pine</b>										
Period 1 (new) Muzzleloader					0-10	0-30	0-10			
Period 2 (new)	0-30	0-10	0-10							
Period 3 (new dates)	0-30	0-10	0-10							
Period 4 (old per 1)	0-30	0-10	0-10							
Period 5 (old per 3)	0-30	0-10	0-10							
<b>Tinemaha &amp; W. Tinemaha</b>										
Period 1 (new) Archery								0-10	0-30	0-10
Period 2 (new)	0-30	0-10	0-10							
Period 3 (new dates)	0-30	0-10	0-10							
Period 4 (old per 1)	0-30	0-10	0-10							
Period 5 (old per 3)	0-30	0-10	0-10							
<b>Grizzly Island</b>										
Period 1	0-12			0-6						
Period 1 Junior	0-2			0-2						
Period 2	0-12		0-2	0-6						
Period 2 Junior				0-2						
Period 3	0-12		0-2	0-4						
Period 4	0-10									
Period 5	0-10									
<b>Fort Hunter Liggett</b>										
Archery Only								0-6	0-10	
Period 1	0-14									
Period 1 Junior	0-4									
Period 2	0-14									
Period 3			0-14							
Period 3 Junior Elk			0-2							

<b>2007 Proposed Elk Tag Allocation</b>										
<b>Hunt Name</b>	<b>Antler-less</b>	<b>Either-Sex</b>	<b>Bull</b>	<b>Spike</b>	<b>Muzzle-loader Bull</b>	<b>Muzzle-loader Antler-less</b>	<b>Muzzle-loader either-sex</b>	<b>Archery Either-Sex</b>	<b>Archery Antler-less</b>	<b>Archery Bull</b>
<b>East Park Reservoir</b>										
Period 1			0-2							
Period 2			0-2							
Period 3	0-10									
San Luis Reservoir ( <i>new</i> )	0-5	0-10	0-10							

Existing regulations specify boundaries for the Big Lagoon Roosevelt Elk Hunt and La Panza Tule Elk Hunt. The proposed change expands the Big Lagoon zone southeast to encompass additional Green Diamond Inc. property. The proposal expands the La Panza boundaries, consistent with the natural range expansion of tule elk which has occurred since this hunt was established in 1993. The proposal is necessary to improve hunter opportunity and is consistent with management objectives for tule elk in the area.

Existing regulations specify boundaries for the Owens Valley Tule Elk Hunt (Independence, Lone Pine, and West Tinemaha zones). The proposed changes adjust the boundaries for the Independence, Lone Pine, and West Tinemaha zones. The proposal is necessary to improve hunter opportunity and is consistent with management objectives for tule elk in the area.

Existing regulations specify hunt periods for the Owens Valley tule elk hunts. The proposed changes add two additional hunt periods prior to the existing hunt periods. The proposal is necessary to improve hunter opportunity and is consistent with management objectives for tule elk in the area.

Existing regulations authorize an Owens Valley archery only tule elk hunt. The proposed action eliminates this hunt. These tags are not area or sex specific and therefore do not allow DFG to manage sex and location of elk being harvested.

Existing regulations do not authorize any muzzle-loader only elk hunts. The proposed regulation would authorize muzzleloader only hunts for the Bishop and Lone Pine tule elk hunts during the new second period.

Existing regulations require a mandatory orientation for the Owens Valley tule elk hunts. The proposed regulation would eliminate this orientation. All information would be supplied to the hunter in a written format. Orientations require substantial time from employees

and the same information can be supplied in a written format.

Existing regulations do not authorize a junior elk hunt in the Owens Valley and Cache Creek. The proposed regulatory action is made to enhance junior big-game hunting opportunity. Junior hunters can apply for and receive an elk tag through the big-game drawing process, but they must compete with adult hunters to do so. The proposal authorizes junior elk tags in the Bishop zone during the new period 2 and at Cache Creek during the general bull hunt. The proposal is necessary to improve junior elk hunter opportunity and is consistent with management objectives for tule elk in the area.

Existing regulations do not provide for public tule elk hunting in western Merced County and adjacent areas in Santa Clara, San Benito, and Fresno Counties near San Luis Reservoir. The proposal will establish a new tule elk hunt in the vicinity of San Luis Reservoir with either-sex elk tags (range 0-10) during a season beginning on the first Saturday in October and extending for 23 consecutive days. The proposal will provide additional elk hunting opportunities, consistent with the statewide management objectives for tule elk.

Public opportunities to hunt elk in Humboldt and Del Norte counties are limited to three hunts that occur on private lands owned by Green Diamond Resource Company and the Marble Mountains Elk Hunt that occurs in a small portion of Humboldt County. Sufficient numbers of elk occur outside of existing hunt boundaries in those counties to provide additional opportunity for the public to hunt elk. Add a new hunt for elk in Humboldt and Del Norte counties, excluding lands open to elk hunting contained within existing elk hunts (Del Norte Roosevelt Elk Hunt, Klamath Roosevelt Elk Hunt, Big Lagoon Roosevelt Elk Hunt, and Marble Mountains Roosevelt Elk Hunt). Either-sex tags (range 0 to 25) would be available to the public during a season

beginning on the first Wednesday in September and extending for 12 consecutive days

Existing regulations establish season dates for the East Park Reservoir antlerless tule elk hunt and Fort Hunter Liggett tule elk hunts. The proposed regulation increases the length of the antlerless hunt for East Park Reservoir from 4 days to 27 days. The proposed regulations for Fort Hunter Liggett decreases the number of days for archery from 11 to 5 days and changes the antlerless archery hunt to run concurrently with the Period 1 antlerless rifle hunt. These regulations modify the season dates for period 1 antlerless hunt (including the junior hunt) from late November to early October. In addition the regulations also modify the period 2 antlerless hunt from mid-December to late November.

**Amend Sections 702 and 708, Title 14, CCR,  
Re: Big Game Hunting Tags**

1) This change will amend regulations to allow hunters to apply for a C-zone tag using only a first-deer tag application. Currently, Section 708 allows hunters to apply for C-zone tags, leftover as of August 2, using a second-deer tag application. C-zone tags have filled on first-deer applications prior to August 2 for many years; therefore, C-zone tags have not been issued to hunters applying on second-deer tag applications and will not be in the foreseeable future. This change will make it clear that C-zone tags are only available using a first deer tag application and it will allow the Department to process applications more efficiently.

2) Currently, there is no deadline for hunters to dispute preference point changes as a result of a specific year's drawing. This change will set a deadline to apply for preference point appeals and allows hunters to appeal their preference points in a timely manner.

3) Currently, regulations prohibit nonresidents from applying for antelope and elk tags. SB 1032 amended Sections 331 and 332 of the Fish and Game Code, allowing the Department to issue not more than one elk and not more than one antelope tag to nonresident hunters annually. This change will amend Section 708 to comply with Fish and Game Code Sections 331 and 332, allowing nonresidents to apply for elk and antelope tags. This change sets a maximum of one nonresident elk and one nonresident antelope tag per year.

4) This amendment is needed to comply with Section 713 of the Fish and Game Code which requires the Department to adjust license fees for changes in the cost of goods and services using the Implicit Price Deflator for State and Local Government Purchases of Goods and Services. The fees for big game hunting tags are found in Section 702. Fish and Game Code, Section 331 au-

thorizes the Commission to set the fee for a nonresident antelope tag at not less than \$350. Fish and Game Code, Section 332 authorizes the Commission to set the fee for a nonresident elk tag at not less than \$1,050. Administrative corrections to the fee columns in Section 702 are included in this amendment.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Humboldt State University, Nelson Hall West, Goodwin Forum, 1 Harpst Street, Arcata, California on Friday, March 2, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Bodega Bay Marine Laboratory, Lecture Hall, 2099 Westside Road, Bodega Bay, California on Friday, April 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 6, 2007, at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 9, 2007. All comments must be received no later than April 13, 2007, at the hearing in Bodega Bay, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Craig Stowers, Wildlife Programs Branch, phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

**Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal reg-

ulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

### **Impact of Regulatory Action**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

#### **Sections 360(a) and 360(b)**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action adjusts tag quotas for existing hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

#### **Sections 360(c) and 360(d)**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action modifies three seasons and adjusts tag quotas for existing hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

#### **Section 361**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action corrects an

error in verbatim, creates a new hunt, and adjusts tag quotas for existing hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

#### **Section 362**

The agency is not aware of any cost impacts that a representative business would necessarily incur in reasonable compliance with the proposed action. The proposed action adjusts tag quotas and moves specific tag procedures and requirements to another section. Given the few number of bighorn sheep tags that are available each year, this proposal is economically neutral to business.

#### **Section 363**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Considering the small number of tags issued over the entire state, this proposal is economically neutral to business.

#### **Section 364**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Considering the small number of tags issued over the entire state, this proposal is economically neutral to business.

#### **Sections 702 and 708**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These changes will allow for the automation of the current manual processes involved with the selling/issuing of licenses.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:  
A private person or business will be required to pay a new fee pursuant to proposed regulations geared to recover the department's cost of administering the program.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None

- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

**Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business.

**Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **TITLE 14. FISH AND GAME COMMISSION**

### **Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220, 240, 316.5 and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 316.5 and 2084 of said Code, proposes to amend Section 27.80, Title 14, California Code of Regulations, relating to ocean salmon sport fishing.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean fishing regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan (FMP). The PFMC is responsible for adopting annual recommendations for the management of sport and commercial ocean fisheries in the Federal fishery management zone (3 to 200 miles offshore) off the coasts of Washington, Oregon, and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service (NMFS). The state's recreational fishing regulations will need to conform to the new Federal rules.

The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport fishery in State waters (0 to 3 miles offshore) which are consistent with Federal fishery management goals and are effective at the same time. Otherwise, preemption of State regulatory authority by the NMFS could occur if State regulations are in conflict with Federal regulations.

Ocean conditions continued to be very poor in 2006 for many species and significant impacts to sea birds were observed. The same conditions will likely impact 2007 salmon distribution and survival in the ocean.

Although the 2007 Klamath River Fall Chinook (KRFC) preseason ocean abundance will not be available until late February, it is likely that the KRFC stocks will continue to be the limiting factor in 2007.

### **PFMC Regulatory Outlook**

The 2007 PFMC salmon regulation process could be contentious and controversial similar to 2006. In 2006, there was a NMFS emergency closure of Federal waters off California during the month of April; the final PFMC recommendations were adopted only after a NMFS emergency rule to allow the FMP conservation objective to be temporarily set at 21,000 naturally spawning KRFC adults, and there were several emergency declarations during the season by Federal and State governments due to severely reduced commercial and recreational salmon fisheries.

There is a strong possibility that this will be the third consecutive year of failing to meet the FMP conservation objective of a minimum floor of 35,000 naturally spawning KRFC adults. Under the terms of the FMP, this would make the stock officially depleted and would require the development of a rebuilding plan.

On March 9, 2007, the PFMC will adopt management options for public review and the final PFMC regulation recommendations will be made on April 6, 2007. The various alternatives that the PFMC will examine in the process of adopting options may include:

1. the minimum size of salmon that may be retained;
2. the number of rods anglers may use (e.g., one, two, or unlimited);
3. the type of bait and/or terminal gear that may be used (e.g., amount of weight, hook type, and type of bait or no bait);
4. the number of salmon that may be retained per angler-day or period of days;
5. the definition of catch limits to allow for combined boat limits versus individual angler limits;
6. the allowable fishing dates and areas; and
7. the overall number of salmon that may be harvested, by species and area.

### **Commission Regulatory Outlook**

Although there are no PFMC regulatory options to review at this time, the 2007 ocean recreation salmon reg-

ulations are expected to range from no fishing north of Point Sur after April to status-quo (2006) regulations.

There also exists the possibility of Commission emergency regulatory action being needed during March or April in response to unforeseen NMFS emergency closures of Federal waters similar to the 2006 season. Presently no early season closures are predicted.

Further Commission conformance action affecting the recreational ocean salmon fisheries may be needed after the PFMC's *Review of 2006 Ocean Salmon Fisheries* and *Preseason Report 1 Stock Abundance Analysis* are available in late February 2007.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Humboldt State University, Nelson Hall West, Goodwin Forum, 1 Harpst Street, Arcata, California, on March 2, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Bodega Bay Marine Laboratory Lecture Hall, 2099 Westside Road, Bodega Bay, California, on April 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 6, 2007 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 9, 2007. All comments must be received no later than April 13, 2007, at the hearing in Bodega Bay, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899.

Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Mr. Gary Stacey, Manager, Marine Region, Department of Fish and Game, phone (562) 342-7108, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons,

including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The 2007 ocean recreation salmon regulations will range from no fishing north of Point Sur after April to status-quo (2006) regulations. Depending on which option is finally adopted by the PFMC, the incremental impacts to total economic output, from the proposed 2007 ocean recreation salmon regulations, may range from no impact (status quo) to as much as \$21,300,000 (no fishing north of Point Sur after April). Consequently, the proposed action may have a significant statewide adverse economic impact directly affecting businesses; however, it is unlikely that this would affect the ability of California businesses to compete with businesses in other states.

The Commission has made an initial determination that the amendment of this regulation may have a significant statewide adverse economic impact on businesses. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
  - (ii) consolidation or simplification of compliance and reporting requirements for businesses;
  - (iii) the use of performance standards rather than prescriptive standards; or
  - (iv) exemption or partial exemption from the regulatory requirements for business.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:
- Depending on which 2007 options are finally adopted by the PFMC, the incremental economic impacts to jobs within the State may range from no impact (status quo) to about 200 jobs lost (no fishing north of Point Sur after April). Likewise impacts to total personal earnings could range from no impact to as much as \$9,000,000.
- (c) Cost Impacts on a Representative Private Person or Business:
- There are no new or additional reporting requirements called for in the proposed regulations. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:
- Incremental fiscal impacts to the California Department of Fish and Game could range from no impact (status quo), to as much as \$2,100,000 in lost revenue from recreational license and tag sales (no fishing north of Point Sur after April). In addition some increases in enforcement costs would be anticipated due to proposed regulations other than status quo.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## GENERAL PUBLIC INTEREST

### AIR RESOURCES BOARD

#### ERRATA

#### TITLES 13. and 17. CALIFORNIA AIR RESOURCES BOARD

By notice dated January 23, 2007, and published in the February 2, 2007, California Regulatory Notice Register, Register 2007, No. 5–Z, February 2, 2007, the Air Resources Board (the “Board” or “ARB”) provided Notice of Public Hearing to Consider the Adoption of Proposed Amendments to the Statewide Portable Equipment Registration Program (PERP) Regulation and the Airborne Toxic Control Measure (ATCM) for Diesel–Fueled Portable Engines.

**PLEASE BE ADVISED** that the notice inadvertently omitted listing proposed amendments to title 13, California Code of Regulations, sections 2453 and 2455.

**PLEASE ALSO BE ADVISED** that there was an error in the notice regarding the description of the Portable Engine ATCM and the Compliance Flexibility. The following sentence currently appears in paragraph 3 on page 4 of the notice:

ARB staff proposes provisions in the Portable Engine ATCM that would provide compliance flexibility during those periods where it can be verified to a local air district or ARB’s Executive Officer that compliant engines are not sufficiently available.

This sentence was corrected to read as follows:

ARB staff proposes provisions in the Portable Engine ATCM that would provide compliance flexibility during those periods where it can be verified to ARB's Executive Officer that compliant engines are not sufficiently available.

The complete text of the notice and the Initial Statement of Reasons are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/2007/perp07/perp07.htm>.

Any questions regarding these corrections should be directed to Alexa Malik, Regulations Coordinator at (916) 322-4011 or Amy Whiting, Regulations Coordinator at (916) 322-6533.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916-323-7053.

## DEPARTMENT OF FISH AND GAME

### Department of Fish and Game — Public Interest Notice

For Publication February 16, 2007  
CESA CONSISTENCY DETERMINATION FOR  
Molycorp, Inc. Waste Discharge Pipeline Removal  
Project  
San Bernardino County

The Department of Fish and Game ("Department") received notice on January 17, 2007 that Molycorp, Inc. proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). Molycorp, Inc. proposes to remove segments of a waste discharge pipeline, remove contaminated soil, upgrade segments of a freshwater pipeline, and abandon monitoring wells at the Mountain Pass Mine in San Bernardino County. These remediation activities are required pursuant to court order and will impact approximately 89 acres of desert tortoise (*Gopherus agassizii*) habitat.

The U.S. Fish and Wildlife Service, on June 5, 2006, issued to the Bureau of Land Management ("BLM"), a no jeopardy Federal Biological Opinion (1-8-03-F-8) which considers the Federally and State threatened desert tortoise and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, Molycorp, Inc. is requesting a determination

that the federal biological opinion 1-8-03-F-8 is consistent with CESA. If the Department determines that the biological opinion is consistent with CESA, Molycorp, Inc. will not be required to obtain an incidental take permit for the proposed project.

## DEPARTMENT OF FISH AND GAME

### Department of Fish and Game — Public Interest Notice

For Publication February 16, 2007  
CESA CONSISTENCY DETERMINATION FOR  
Prichard Lake Restoration Project  
Sacramento County

The Department of Fish and Game ("Department") received a notice on January 26, 2007 that the Sacramento County Airport System ("SCAS") proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of restoration activities on 42.7 acres of wetland habitat at and around Prichard Lake in Sacramento County. The activities will temporarily impact the 9.7 acre Prichard Lake site and the 33 acres wetland compensation site.

The U.S. Fish and Wildlife Service, on May 27, 2004, issued to the U.S. Army Corps of Engineers ("Corps"), a no jeopardy federal biological opinion (1-1-04-F-0030) which considers impacts to the Federally and State threatened giant garter snake (*Thamnophis gigas*), and authorizes incidental take. The Service subsequently issued an amendment (1-1-06-F-0225) to the biological opinion on August 25, 2006 which slightly modified the project activities.

Pursuant to California Fish and Game Code Section 2080.1, the Corps and SCAS are requesting a determination that federal biological opinion 1-1-04-F-0030, as amended by 1-1-06-F-0225, is consistent with CESA. If the Department determines that the federal biological opinion is consistent with CESA, SCAS will not be required to obtain an incidental take permit for the proposed project.

## FISH AND GAME COMMISSION

### NOTICE OF FINDING

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Fish and Game Code Section 2074.2, the California Fish and Game Commission (Commission), at its December 7, 2006, meeting in Santa Monica, rejected the petition filed by the Department of Fish and

Game to delist Tracy's eriastrum (*Eriastrum tracyi* H. Mason) and remove it from the list of rare plants under the California Endangered Species Act, Fish and Game Code Section 2050 et seq. The Commission's decision was based on a finding that the petition did not provide sufficient information to indicate that the petitioned action may be warranted. At this meeting, the Commission also announced its intention to ratify its finding at its February 1, 2007, meeting in Monterey.

NOTICE IS ALSO GIVEN that at its February 1, 2007, formal meeting in Monterey, the Commission adopted the following formal finding and statement of the reasons for its rejection of the petition.

## I BACKGROUND

On September 1, 2006, the Department prepared and submitted a petition to delist Tracy's eriastrum and remove it from the list of rare plants. The petition stated that Tracy's eriastrum was not a valid and distinct taxon but was included in a more widespread taxon, Brandegee's eriastrum (*Eriastrum brandegeae* H. Mason). The Commission was scheduled to consider this petition during its December 7, 2006, hearing. However, the Department requested to withdraw the petition based on the following rationale. On November 29, 2006, Dr. J. Mark Porter, a scientist at Claremont Graduate University, contacted the Department regarding the petition to delist Tracy's eriastrum. Dr. Porter is overseeing research on *Eriastrum* and stated that Tracy's eriastrum is still considered to be a valid and distinct taxon and should not be delisted. In withdrawing the petition, Tracy's eriastrum will be retained on the list of rare plants.

## II STATUTORY REQUIREMENTS

A species is endangered under California Endangered Species Act, Fish and Game Code § 2050 et seq. (CESA), if it "is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease." (Fish & G. Code, § 2062.) A species is threatened under CESA if it is "not presently threatened with extinction [but] is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by [CESA]..." (Fish & G. Code, § 2067.) The responsibility for deciding whether a species should be listed as endangered or threatened rests with the Fish and Game Commission (Commission). (Fish & G. Code, § 2070.)

California law does not define what constitutes a "serious danger" to a species, nor does it describe what constitutes a "significant portion" of a species' range. The Commission makes the determination as to whether a species currently faces a serious danger of extinction throughout a significant portion of its range, (or for a listing as threatened whether such a future threat is likely) on a case-by-case basis after evaluating and weighing all the biological and management information before it. This approach is consistent with the process followed by federal agencies in deciding whether to list species under the federal Endangered Species Act, 16 U.S.C. § 1531 et seq.

Non-emergency listings involve a two-step process: first, the Commission "accepts" a petition to list the species, which immediately triggers regulatory protections for the species as a candidate for listing and also triggers a year-long study by the Department of Fish and Game (Department) of the species' status (Fish & G. Code, §§ 2074.2, 2074.6, and 2084); second, the Commission considers the Department's status report and information provided by other parties and makes a final decision to formally list the species as endangered or threatened (Fish & G. Code, § 2075.5).

To be accepted by the Commission, a petition to list a species under CESA must include sufficient scientific information that the listing may be warranted. (Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subds. (d) and (e).) The petition must also include information regarding the species' population trend, range, distribution, abundance and life history; factors affecting the species' ability to survive and reproduce; the degree and immediacy of the threat to the species; the impact of existing management efforts; suggestions for future management of the species; the availability and sources of information about the species; information about the kind of habitat necessary for survival of the species; and a detailed distribution map. (Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subd. (d)(1).) In deciding whether it has sufficient information to indicate the petitioned listing may be warranted, the Commission is required to consider the petition itself, the Department of Fish and Game's written evaluation report, and other comments received about the petitioned action. (Fish & G. Code, § 2074.2.)

The requisite standard of proof to be used by the Commission in deciding whether listing may be warranted (i.e. whether to accept or reject a petition) was described in *Natural Resources Defense Council v. Fish and Game Commission* (1994) 28 Cal.App.4th 1104. In the *NRDC* case, the court determined that "the section 2074.2 phrase 'petition provides sufficient information to indicate that the petitioned action may be warranted' means that amount of information, when considered in light of the Department's written report and the com-

ments received, that would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur. . .” (NRDC, supra, 28 Cal.App.4<sup>th</sup> at page 1125.) This “substantial possibility” standard is more demanding than the low “reasonable possibility” or “fair argument” standard found in the California Environmental Quality Act, but is lower than the legal standard for a preliminary injunction, which would require the Commission to determine that a listing is “more likely than not” to occur. (Ibid.)

The NRDC court noted that “this ‘substantial possibility’ standard involves an exercise of the Commission’s discretion and a weighing of evidence for and against listing, in contrast to the fair argument standard that examines evidence on only one side of the issue. (NRDC, supra, 28 Cal.App.4<sup>th</sup> at page 1125.) As the Court concluded, the decision-making process involves:

“... a taking of evidence for and against listing in a public quasi-adjudicatory setting, a weighing of that evidence, and a Commission discretion to determine essentially a question of fact based on that evidence. This process, in other words, contemplates a meaningful opportunity to present evidence contrary to the petition and a meaningful consideration of that evidence.” (Id. at 1126.)

Therefore, in determining whether listing “may be warranted,” the Commission must consider not only the petition and the report prepared on the petition by the Department, but other evidence introduced in the proceedings. The Commission must decide this question in light of the entire record.

### III COMMISSION FINDING

For the reasons stated below, the Commission finds that the petition to delist Tracy’s *eriastrum* from the list of rare plants under CESA does not provide sufficient information to indicate that the petitioned action may be warranted, and that the petition must therefore be rejected.

### IV STATEMENT OF REASONS

This statement of reasons sets forth an explanation of the basis for the Commission’s rejection of the petition

to delist Tracy’s *eriastrum* and remove it from the list of rare plants. Tracy’s *eriastrum* was first published as a species by Mason (1945)<sup>1</sup>. It was retained as a species in Munz and Keck (1968)<sup>2</sup> and was considered distinct in a 1972 monograph (Harrison, 1972)<sup>3</sup>. However, Tracy’s *eriastrum* was not included in the current version of The Jepson Manual — Higher Plants of California (Hickman, 1993)<sup>4</sup>. Instead, it was included in a more widespread taxon, Brandegees’ *eriastrum*. Authors of treatments in Hickman were instructed to “lump” species undergoing study into related taxa even if previous taxonomic treatments considered them distinct. Thus, because Tracy’s *eriastrum* was no longer considered distinct in Hickman, the Department prepared a delisting petition to remove it from the list of rare plants.

Subsequent to the Department’s petition, new and more accurate botanical evaluations treat Tracy’s *eriastrum* as distinct. For example, a new edition of The Jepson Manual is being compiled which will include Tracy’s *eriastrum* as a separate and valid taxon. The treatment of the genus *Eriastrum* for the new edition is the subject of a PhD dissertation by Ms. Sarah DeGroot, a student of Dr. Porter. Her research provided genetic and morphological data that supports retaining *Eriastrum tracyi* as a distinct species, and was reviewed by Dr. Robert Patterson at San Francisco State University. Dr. Patterson is an authority on *Eriastrum* and the Phlox Family (Polemoniaceae) and is co-author, with Sarah DeGroot, of the genus *Eriastrum* for the new edition of The Jepson Manual. The Commission finds credibility in the work of Ms. DeGroot, Dr. Porter and Dr. Patterson; therefore delisting is not warranted and Tracy’s *eriastrum* should be retained on the list of rare plants.

<sup>1</sup> Mason, H.L. 1945. The genus *Eriastrum* and the influence of Bentham and Gray upon the problem of generic confusion in Polemoniaceae. Madroño 8:87–88.

<sup>2</sup> Munz, P.A. and Keck, D.D. 1968. A California flora and supplement. University of California Press, Berkeley.

<sup>3</sup> Harrison, H.K. 1972. Contributions to the study of the genus *Eriastrum*. Brigham Young University Science Bulletin. Biological Series 16(4). 26 pp.

<sup>4</sup> Hickman, J. C., ed. 1993. The Jepson manual: higher plants of California. University of California Press, Berkeley. 1400 pp.

**DISAPPROVAL DECISIONS**

**DECISIONS OF DISAPPROVAL OF  
REGULATORY ACTIONS**

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at [www.oal.ca.gov](http://www.oal.ca.gov). You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916) 323-6225 — FAX (916) 323-6826. Please request by OAL file number.

**FAIR EMPLOYMENT AND HOUSING  
COMMISSION**

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

In re:

FAIR EMPLOYMENT AND  
HOUSING COMMISSION

REGULATORY ACTION:

Title 2,

California Code of Regulations

ADOPT: 7288.0

AMEND: 7288.0, 7288.1, 7288.2

DECISION OF DISAPPROVAL  
OF REGULATORY ACTION

(Gov. Code, sec. 11349.3)

OAL File No. 06-1214-01 S

**DECISION SUMMARY**

This action adopts the Fair Employment and Housing Commission's regulations implementing sexual harassment training for supervisory employees located in California as mandated by AB 1825 (Stats. 2004, Chap. 933).

On January 30, 2007, the Office of Administrative Law ("OAL") notified the Fair Employment and Housing Commission ("FEHC") of the disapproval of the above-referenced regulatory action. OAL disapproved the regulations for the following reasons: (1) failure to comply with the "Clarity" standard of Government Code section 11349.1 and (2) failure to comply with APA procedural requirements.

**Date:** February 6, 2007

Gordon R. Young  
Senior Staff Counsel

For:

WILLIAM L. GAUSEWITZ  
Director

Original: Ann Noel,  
Executive and Legal Affairs Secretary

**STATE BOARD OF EDUCATION**

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

AGENCY: STATE BOARD OF  
EDUCATION

ACTION: Adopt SECTIONS 1000, 1000.1  
1000.2, 1000.3, 1000.4, 1000.5, 1000.6, 1000.7  
of Title 5 of the California Code of Regulations

DECISION OF DISAPPROVAL  
OF EMERGENCY  
REGULATORY ACTION

(Gov. Code, sec. 11349.6)

OAL File No. 07-0119-02 E

**DECISION SUMMARY.**

On January 17, 2007, the State Board of Education (Board) submitted to the Office of Administrative Law (OAL) a proposed emergency action to set forth the application process for grants under the Quality Education Investment Act (QEIA) and the manner in which the applications would be reviewed, ranked and selected. On January 29, 2007 OAL notified the Board that OAL disapproved the emergency regulatory action because the finding of emergency did not contain "a description of the specific facts demonstrating the existence of an emergency and the need for immediate action" pursuant to the Administrative Procedure Act (APA). (Government Code sections 11342.545 and 11346.1<sup>1</sup>)

DATE: 2/5/07

KATIE COYNE  
Senior Counsel

<sup>1</sup> Unless stated otherwise, all California Code references are to the Government Code.

For:  
WILLIAM L. GAUSEWITZ  
Director

Original: Marsha A. Bedwell, General Counsel  
cc: Debra Strain

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

#### BOARD OF ACCOUNTANCY Fees

This is the certification of an emergency regulation that set the fee for submission of a practice privilege notification with an authorization to sign attest reports at \$100 and the fee for submission of the practice privilege notification without an authorization to sign attest reports at \$50.

Title 16  
California Code of Regulations  
AMEND: 70  
Filed 02/01/07  
Effective 02/01/07  
Agency Contact: Aronna Wong (916) 561-1788

#### BUREAU OF AUTOMOTIVE REPAIR Invoice Requirement; Individual Prices for Parts and Service/Repair

This regulatory action deals with invoice requirements applicable to automotive repair dealers.

Title 16  
California Code of Regulations  
AMEND: 3356  
Filed 02/02/07  
Effective 03/04/07  
Agency Contact: James Allen (916) 255-4300

#### CALIFORNIA GAMBLING CONTROL COMMISSION Conflict of Interest Code

The California Gambling Control Commission is adopting its conflict of interest code currently found at

title 4, section 12590, California Code of Regulations. Its prior citation was title 2, div. 8, ch. 95, sec. 58400, California Code of Regulations. This adoption was approved for filing by the Fair Political Practices Commission on January 8, 2007.

Title 4  
California Code of Regulations  
AMEND: 12590  
Filed 01/31/07  
Effective 03/02/07  
Agency Contact: Pam Ramsay (916) 263-8111

#### COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

##### Certificates — Professional and Course Completion

POST is modifying their certification regulations and adopting a new format, putting all regulations concerning certification in one area and moving their regulations from the 1000 series to the 9000 series of Title 11 to provide more room and uniformity in their regulations. They are also updating the regulations to conform to legislation which significantly limits their ability to "cancel" or "revoke" certificates that they issued. The changes are being made on a chapter by chapter basis — moving sections from the old regs and integrating with forms to make a more comprehensive presentation.

Title 11  
California Code of Regulations  
ADOPT: 9070, 9071, 9072, 9073, 9076, 9077, 9078  
AMEND: 1005, 1018, 1055, REPEAL: 1011  
Filed 02/02/07  
Effective 03/04/07  
Agency Contact: Patricia Cassidy (916) 227-4847

#### CONTRACTORS STATE LICENSE BOARD Assessment of Civil Penalties

This amendment of 16 CCR §884 is to adjust the maximum civil penalty amount that can be assessed to an individual who violates the Contractors License Law. Currently the maximum amount is set at \$2000, but the legislature amended Business & Professions Code §7099.2 to increase the statutory limit to \$5000. In this rulemaking package CSLB is amending §884 to increase the minimum and maximum fines that can be assessed depending on the B&P Code section violated.

Title 16  
California Code of Regulations  
AMEND: 884  
Filed 01/31/07  
Effective 03/02/07  
Agency Contact: Betsy Figueria (916) 255-3369

**DEPARTMENT OF CONSERVATION**  
**AB 3056 Handling Fee Emergency Regulations**

In this emergency regulatory action, the Department of Conservation adopts and amends regulations under the California Beverage Container Recycling and Litter Reduction Act relating to the handling fee paid to certain recycling centers, to implement statutory changes to Public Resources Code section 14585 as that statute was amended in AB 3056 (Statutes of 2006, Chapter 907). The adoption of these regulations is deemed to be an emergency pursuant to Public Resources Code section 14536(b).

Title 14  
California Code of Regulations  
ADOPT: 2990, 2995, 2997 AMEND: 2125, 2518  
Filed 02/05/07  
Effective 02/05/07  
Agency Contact: Karen Denz (916) 322-1899

**DEPARTMENT OF CORRECTIONS AND REHABILITATION****Transfer of Inmate Assessment Responsibilities Pilot Program**

Penal Code section 1203.8 authorizes the California Department of Corrections and Rehabilitation (CDCR) to transfer the responsibility of the preparation of an offender's risk and needs assessment to the county probation department and court up to three sites statewide. This regulatory action establishes and implements the CDCR County Assessment Program at Richard J. Donovan Correctional Facility (RJD) and California Institution for Women (CIW), as a two-year pilot program pursuant to Penal Code section 5058.1, and thus, is exempt from the rulemaking requirements of the Administrative Procedure Act (APA) and OAL review. The purpose of this program is to prepare and enhance non-violent felony offenders' successful reentry into the community. Section 3999.3 will be repealed by operation of law two years after the commencement of the pilot program unless section 3999.3 is adopted pursuant to the rulemaking requirements of the APA before 2/5/09. (Pen. Code, sec. 5058.1(d).)

Title 15  
California Code of Regulations  
ADOPT: 3999.3  
Filed 02/05/07  
Effective 02/05/07  
Agency Contact: Randy Marshall (916) 341-7328

**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Peach Fruit Fly Eradication Area**

In this Certificate of Compliance regulatory action, the Department of Food and Agriculture amends its reg-

ulation pertaining to the "peach fruit fly eradication area" to include Los Angeles County as an eradication area.

Title 3  
California Code of Regulations  
AMEND: 3591.12(a)  
Filed 01/31/07  
Effective 01/31/07  
Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF JUSTICE****Report of Transactions — Health and Safety Code sections 32121, 32126**

This rulemaking adds Chapter 17, section 999.40 to Title 11 of the CCR. This new regulation clarifies that health care districts must report to the Attorney General within thirty days of entering into any leases or transfers of district assets. The report must be in writing and include the type of transaction and the entity to whom the assets were leased or transferred. The regulation also contains the addresses to which the health care districts must report the required information.

Title 11  
California Code of Regulations  
ADOPT: 999.40  
Filed 02/02/07  
Effective 03/04/07  
Agency Contact: Jeffrey M. Ogata (916) 327-6820

**DEPARTMENT OF PESTICIDE REGULATION**  
**Pesticide Product Registration**

This regulatory action is to amend three subdivisions in Title 3 as a result of a recent Appellate Court ruling: Syngenta Crop Protection, Inc. v. Helliker [2006] 40 Cal. Rptr.3d 278. This ruling in 2-26-06 was appealed to the State Supreme Court which denied the petition for review on 8-2-06. This court ruling is final since no further appeals are available. This action is submitted pursuant to 1 CCR 100(a)(3).

Title 3  
California Code of Regulations  
AMEND: 6170, 6172, 6200  
Filed 02/07/07  
Effective  
Agency Contact:  
Linda Irokawa-Otani (916) 445-3991

**DEPARTMENT OF SOCIAL SERVICES****Adult Programs — Protective Supervision and Variable Assessments**

Certification of compliance with APA requirements to amend the sections 30-757 and 30-761 of the Department's Manual of Policies and Procedures consistent with Welfare and Institutions Code sections

12301.1 and 12301.21 regarding when and how often assessments of individuals receiving protective services occur. Welfare and Institutions Code section 12301.21 requires the adoption of a form to collect certain information about the individuals.

Title MPP  
California Code of Regulations  
AMEND: 30-757, 30-761  
Filed 02/05/07  
Effective 02/05/07  
Agency Contact: Alison Garcia (916) 657-2586

**STATE LANDS COMMISSION**  
**Marine Terminal Oil Pipelines**

State Lands Commission proposes amendment to marine terminal oil pipeline regulations in Title 2, Division 3, Chapter 1, Article 5.5. The amendments conform existing pipeline testing and maintenance requirements to advancements in pipeline testing procedures and equipment and improved pipeline building standards in Marine Oil Terminal and Maintenance Standards (MOTEMS), Title 24, California Code of Regulations, Chapter 31F, Divisions 1 through 11.

Title 2  
California Code of Regulations  
AMEND: 2561, 2563, 2564, 2565, 2566, 2567  
Filed 02/02/07  
Effective 03/04/07  
Agency Contact: Ravindra Varma (562) 499-6312

**STATE WATER RESOURCES CONTROL BOARD**  
**Amendment to the Los Angeles Water Basin Plan**

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted Resolution R4-2006-012 amending the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to incorporate Total Maximum Daily Loads (TMDLs) for Metals and Selenium in Calleguas Creek, its Tributaries and Mugu Lagoon. The State Water Resources Control Board approved this amendment under Resolution No. 2006-0078 on October 25, 2006.

Title 23  
California Code Regulations  
ADOPT: 3939.23  
Filed 02/06/07  
Effective  
Agency Contact: Rik Rasmussen (916) 341-5549

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN SEPTEMBER 06, 2006 TO  
FEBRUARY 07, 2007**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

02/02/07	AMEND: 2561, 2563, 2564, 2565, 2566, 2567
01/26/07	ADOPT: 599.550, 599.552, 599.553, 599.554 AMEND: 599.500
01/19/07	ADOPT: 18531.62, 18531.63, 18531.64 AMEND: 18544
01/11/07	AMEND: 1894.4, 1896.12
01/09/07	ADOPT: 18534
01/09/07	ADOPT: 18530.3
01/09/07	AMEND: 18707.1
01/08/07	ADOPT: 1859.106.1 AMEND: 1859.106
12/22/06	AMEND: 21906
12/18/06	ADOPT: 18421.3
12/18/06	AMEND: 1859.2, 1859.70.1, 1859.71.3, 1859.78.5
12/18/06	AMEND: 18312, 18316.5, 18326, 18401, 18521, 18537.1, 18704.5, 18705.5, 18730, 18746.2
12/18/06	AMEND: 18545
12/18/06	AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
12/14/06	ADOPT: 18707.10
12/13/06	ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80
11/06/06	AMEND: 18216, 18421.1
11/03/06	AMEND: 1859.73.2
10/31/06	AMEND: 559.500, 559.501, 559.503, 559.504, 559.505, 559.507, 559.508, 559.509, 559.510, 559.511, 559.512, 559.513, 559.515, 559.516, 559.517

10/12/06 AMEND: 714  
 09/27/06 AMEND: 18754  
 09/07/06 AMEND: 21904, 21905

**Title 3**

02/07/07 AMEND: 6170, 6172, 6200  
 01/31/07 AMEND: 3591.12(a)  
 01/24/07 AMEND: 3591.13(a)  
 01/18/07 AMEND: 3423(b)  
 01/18/07 AMEND: 3800.1, 3800.2  
 01/18/07 AMEND: 3433(b)  
 01/18/07 AMEND: 3433(b)  
 01/09/07 AMEND: 3433(b)  
 01/08/07 AMEND: 3591.2(a)  
 01/08/07 AMEND: 3591.6(a)  
 01/05/07 AMEND: 3433(b)  
 01/05/07 AMEND: 3406(b)  
 01/05/07 AMEND: 6625  
 01/03/07 AMEND: 3424(b)  
 12/20/06 AMEND: 3423(b)  
 12/20/06 AMEND: 3433(b)  
 12/19/06 ADOPT: 6310, 6312, 6314 AMEND:  
 6170  
 12/06/06 AMEND: 3591.6  
 12/06/06 AMEND: 3700(c)  
 11/30/06 ADOPT: 6128 AMEND: 6130  
 11/16/06 AMEND: 3433(b)  
 11/13/06 AMEND: 3423(b)  
 11/08/06 AMEND: 3591.2(a)  
 10/27/06 ADOPT: 765 AMEND: 760.4, Article  
 3.5  
 10/19/06 AMEND: 3591.6(a)  
 10/12/06 AMEND: 3433(b)  
 10/12/06 AMEND: 3433(b)  
 10/12/06 ADOPT: 3424  
 10/06/06 AMEND: 3700(c)  
 10/06/06 AMEND: 3591.13(a)  
 10/05/06 AMEND: 3589  
 10/05/06 AMEND: 3433(b)  
 10/02/06 AMEND: 3591.6(a)  
 09/19/06 AMEND: 3433(b)  
 09/12/06 AMEND: 3406(b)  
 09/12/06 AMEND: 3591.12(a)  
 09/08/06 AMEND: 3423(b)  
 09/07/06 AMEND: 3433(b)

**Title 4**

01/31/07 AMEND: 12590  
 01/30/07 AMEND: 12101, 12301.1, 12309  
 01/30/07 AMEND: 12358  
 01/30/07 ADOPT: 12460, 12461, 12462, 12463,  
 12464, 12466  
 01/26/07 AMEND: 1433  
 01/17/07 ADOPT: 523

01/11/07 AMEND: 1536  
 12/05/06 AMEND: 1582  
 11/22/06 AMEND: 1544 & 1658  
 11/16/06 ADOPT: 2422.1  
 11/03/06 AMEND: 10152, 10153, 10155, 10159,  
 10160, 10161, 10162  
 10/24/06 AMEND: 1486  
 10/16/06 AMEND: 1733  
 09/26/06 AMEND: 1976.8

**Title 5**

01/10/07 AMEND: 55806  
 11/13/06 AMEND: 18013, 18054  
 11/08/06 AMEND: 850, 851, 852, 853, 854, 855,  
 857, 858, 859, 861, 862, 863, 864, 864.5,  
 865, 866, 867, 870 REPEAL: 850.5, 880,  
 881, 882, 883, 884, 886, 887, 888, 890,  
 891, 892, 893, 894, 895, 896, 897, 898,  
 899, 901  
 10/26/06 AMEND: 30023(c)  
 10/23/06 ADOPT: 11991, 11991.1, 11991.2  
 10/16/06 ADOPT: 11987, 11987.1, 11987.2,  
 11987.3, 11987.4, 11987.5, 11987.6,  
 11987.7  
 09/29/06 ADOPT: 19833.5, 19833.6 AMEND:  
 19815, 19816, 19816.1, 19819, 19824,  
 19828.1, 19831  
 09/15/06 REPEAL: 18074.1(b), (c), (d), 18074.3,  
 18074.4, 18074.5, 18074.6

**Title 8**

12/29/06 AMEND: 1598, 1599  
 12/27/06 AMEND: 3385  
 12/21/06 AMEND: 5031  
 12/15/06 AMEND: 5006.1  
 11/14/06 AMEND: 3482, 5161, 5178  
 11/14/06 AMEND: 6368  
 11/08/06 AMEND: 17000 Appendix  
 11/02/06 AMEND: 3650  
 10/18/06 AMEND: 9768.5, 9768.10, 9788.11,  
 9788.31, 9789.33  
 09/29/06 AMEND: 341, 341.1  
 09/25/06 AMEND: 4920  
 09/21/06 ADOPT: 10001, 10002, 10003  
 09/19/06 ADOPT: 1532.2, 5206, 8359 AMEND:  
 5155

**Title 9**

12/29/06 ADOPT: 3100 3200.010, 3200.020,  
 3200.030, 3200.040 3200.050, 3200.060,  
 3200.070, 3200.080, 3200.090,  
 3200.100, 3200.110, 3200.120,  
 3200.130, 3200.080, 3200.090,  
 3200.150, 3200.160, 3200.170,  
 3200.180, 3200.190, 3200.210,  
 3200.220, 3200.230, 3200.240,

	3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3405, 3410, 3415, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650		
11/21/06	AMEND: 9100		
09/25/06	ADOPT: 3400		
<b>Title 10</b>			
01/23/07	ADOPT: 2183, 2183.1, 2183.2, 2183.3, 2183.4 REPEAL: 2691.18, 2691.19		
01/10/07	AMEND: 3528		
01/08/07	AMEND: 2698.52(c), 2698.53(b), 2698.56(c)		
01/03/07	ADOPT: 2642.4, 2643.8, 2644.24, 2644.25, 2644.26, 2644.27, 2644.50, AMEND: 2642.5, 2642.6, 2642.7, 2643.6, 2644.2, 2644.3, 2644.4, 2644.5, 2644.6, 2644.7, 2644.8, 2644.10, 2644.12, 2644.15, 2644.16, 2644.17, 2644.18, 2644.19, 2644.20, 2644.21, 2644.23		
12/29/06	AMEND: 2696.1, 2696.2, 2696.3, 2696.5, 2696.6, 2696.7, 2696.9, 2696.10 REPEAL: 2696.4, 2696.8		
12/29/06	AMEND: 2651.1, 2661.1, 2661.3, 2662.1, 2662.3, 2662.5		
12/29/06	AMEND: 2222.10, 2222.11, 2222.12, 2222.14, 2222.15, 2222.16, 2222.17, 2222.19 REPEAL: 2222.13		
12/29/06	AMEND: 2052.1, 2052.4		
12/29/06	ADOPT: 5327, 5357.1, 5358, 5358.1 AMEND: 5350, 5352		
12/29/06	AMEND: 2632.5(c)		
12/27/06	AMEND: 2498.6		
12/26/06	ADOPT: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86, 2698.87, 2698.88, 2698.89, 2698.89.1 AMEND: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86		
12/22/06	ADOPT: 2548.1, 2548.2, 2548.3, 2548.4, 2548.5, 2548.6, 2548.7, 2548.8		
12/20/06	ADOPT: 2614, 2614.1, 2614.2, 2614.3, 2614.4, 2614.5, 2614.6, 2614.7, 2614.8, 2614.9, 2614.10, 2614.11, 2614.12, 2614.13, 2614.14, 2614.15, 2614.16, 2614.17, 2614.18, 2614.19, 2614.20, 2614.21, 2614.22, 2614.23, 2614.24, 2614.25, 2614.26, 2614.27		
12/19/06	AMEND: 2690.90, 2690.91, 2690.92, 2690.93, 2690.94		
12/13/06	ADOPT: 2534.40, 2534.41, 2534.42, 2534.43, 2534.44, 2534.45, 2534.46		
11/15/06	AMEND: 2697.6, 2697.61		
11/09/06	AMEND: 2498.5		
11/09/06	AMEND: 2534.27, 2534.28		
10/24/06	ADOPT: 2303, 2303.1, 2303.2, 2303.3, 2303.4, 2303.5, 2303.6, 2303.7, 2303.8, 2303.9, 2303.10, 2303.11, 2303.12, 2303.13, 2303.14, 2303.15, 2303.16, 2303.17, 2303.18, 2303.19, 2303.20, 2303.21, 2303.22, 2303.23, 2303.24, 2303.25		
10/16/06	ADOPT: 2194.9, 2194.10, 2194.11, 2194.12, 2194.13, 2194.14, 2194.15, 2194.16, 2194.17		
10/10/06	AMEND: 2498.4.9		
10/03/06	AMEND: 2498.5		
10/02/06	AMEND: 2248.4, 2249.1, 2249.2, 2249.6, 2249.7, 2249.8, 2249.9, 2249.10, 2249.11, 2249.12, 2249.13, 2249.14, 2249.15, REPEAL: 2248.11, 2248.12, 2248.19		
09/20/06	AMEND: 2318.6, 2353.1		
09/14/06	AMEND: 3528		
<b>Title 11</b>			
02/02/07	ADOPT: 9070, 9071, 9072, 9073, 9076, 9077, 9078 AMEND: 1005, 1018, 1055, REPEAL: 1011		
02/02/07	ADOPT: 999.40		
01/30/07	AMEND: 20		
01/25/07	AMEND: 30.1		
01/25/07	AMEND: 30.5		
01/19/07	AMEND: 1005, 1007, 1080		
12/21/06	AMEND: 1070, 1081, 1082		
12/21/06	AMEND: 48.6		
12/21/06	ADOPT: 80.3		
10/13/06	AMEND: 30.5		
10/13/06	AMEND: 30.1		
<b>Title 13</b>			
01/18/07	AMEND: 1961, 1976, 1978		
01/16/07	ADOPT: 2189 AMEND: 2180, 2180.1, 2181, 2182, 2183, 2185, 2186, 2187, 2188		
12/27/06	ADOPT: 1300 REPEAL: 1300, 1301, 1302, 1303, 1304, 1304.1, 1305, 1310, 1311, 1312, 1313, 1314, 1315, 1320, 1321, 1322, 1323, 1324, 1325, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1339.1, 1339.2,		

	1339.3, 1339.4, 1339.5, 1339.6, 1340, 1341, 1342, 1343, 1344, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1370, 1371, 1372, 1373, 1374, 1375, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1420, 1421, 1422, 1423, 1424, 1425		1724.4, 1724.6, 1724.8, 1724.9, 1724.10, 1740.1, 1740.3, 1740.5, 1741, 1742, 1743, 1744, 1744.2, 1744.3, 1744.4, 1744.5, 1744.6, 1745, 1745.8, 1745.10, 1746.2, 1747, 1747.1, 1747.2, 1747.3, 1747.5, 1747.7, 1747.8, 1747.10, 1748.2, 1748.3, 1760, 1771, 1774, 1776, 1778, 1779, 1821, 1830, 1831, 1832, 1850, 1854, 1855, 1856, 1857, 1858, 1863, 1865, 1881, 1881.5, 1882, 1914, 1920.1, 1920.2, 1920.3, 1931, 1931.1, 1931.2, 1931.5, 1932, 1933.1, 1933.2, 1933.3, 1935.1, 1935.2, 1936, 1937.1, 1941, 1942, 1942.1, 1942.2, 1950.1, 1954, 1960, 1961, 1962, 1963, 1966, 1971, 1981, 1981.2, 1995.1, 1996.8, 1997.1, 1997.2, 1997.3, 1997.4, 1997.5, 1998.2
12/13/06	AMEND: 553.70		
12/06/06	ADOPT: 2022, 2022.1		
12/01/06	ADOPT: 2479		
11/13/06	AMEND: 2445.2(a)		
11/13/06	AMEND: 2111, 2112, 2441, 2442, 2444.2, 2445.1, 2445.2, 2446		
10/30/06	ADOPT: 118.00		
10/27/06	AMEND: 423.00		
10/16/06	AMEND: 1956.8, 2404, 2424, 2425, 2485		
10/05/06	AMEND: Section 1		
09/14/06	AMEND: 25.06, 25.07, 25.08, 25.10, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, 25.22	12/19/06	AMEND: 105.1, 120.01, 149.1, 150, 150.02, 150.03, 150.05, 180.3, 180.15, 231
09/11/06	ADOPT: 2467.8, 2467.9 AMEND: 2467, 2467.1, 2467.2, 2467.3, 2467.4, 2467.5. 2467.6, 2467.7, Incorporated Documents REPEAL: 2467.8, Incorporated Test Method 512	12/05/06	AMEND: 2305, 2310, 2320
09/07/06	AMEND: 1956.1, 1956.8, 2023.1, 2023.4	12/01/06	AMEND: 163, 164
		11/27/06	ADOPT: 18660.5, 18660.6, 18660.7, 18660.8, 18660.9, 18660.10, 18660.11, 18660.12, 18660.13, 18660.14, 18660.15, 18660.16, 18660.17, 18660.18, 18660.19, 18660.20, 18660.21, 18660.22, 18660.23, 18660.24, 18660.25, 18660.30, 18660.31, 18660.32, 18660.33
<b>Title 13, 17</b>		11/27/06	ADOPT: 4970.49, 4970.50, 4970.51, 4970.52, 4970.53, 4970.54, 4970.55, 4970.56, 4970.57, 4970.58, 4970.59, 4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67, 4970.68, 4970.69, 4970.70, 4970.71, 4970.72
12/27/06	ADOPT: 93116.3.1 AMEND: 2452, 2456, 2461, 93115, 93116.2, 93116.3	11/22/06	AMEND: 939.15, 959.15
12/06/06	ADOPT: 2299.1, 93118	11/16/06	AMEND: 916.5(e), 936.5(e), 956.5(e), 916.9, 936.9, 956.9
<b>Title 14</b>		11/14/06	AMEND: 5101, 5104
02/05/07	ADOPT: 2990, 2995, 2997 AMEND: 2125, 2518	11/07/06	AMEND: 11900
01/18/07	ADOPT: 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 28.48, 28.49, 28.51, 28.52, 28.53, 28.57 AMEND: 1.91, 27.60, 27.65, 27.83 (amend and renumber to 27.51), 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, 28.90, 701 REPEAL: 27.67, 27.82	11/02/06	AMEND: 183
12/28/06	ADOPT: 25231	10/19/06	AMEND: 632(b)(72)
12/26/06	AMEND: 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1712, 1714, 1720, 1721, 1721.2, 1721.3, 1721.3.1, 1721.4, 1721.5, 1721.6, 1721.7, 1721.8, 1721.9, 1722, 1722.1.1, 1722.3, 1722.4, 1722.5, 1722.7, 1723, 1723.5, 1723.7, 1723.8, 1723.9, 1724 1724.1, 1724.3,	10/11/06	AMEND: 895, 895.1, 1038, 1038(f)
		10/06/06	AMEND: 670.2
		09/20/06	AMEND: 895.1, 898, 914.8, [934.8, 954.8], 916, [936, 956], 916.2 [936.2, 956.2], 916.9, [936.9, 956.9], 916.11, [936.11, 956.11], 916.12, [936.12,

956.12], 923.3, [943.3, 963.3], 923.9, [943.9, 963.9]		<b>Title 17</b>
09/19/06 AMEND: 502		01/09/07 AMEND: 93000
09/15/06 AMEND: 851.8, 851.23, 851.51.1, 851.85, 852.3, 851.4, 851.10, 851.10.1		01/08/07 ADOPT: 2641.56, 2641.57 AMEND: 2641.30, 2641.45, 2641.55, 2643.5, 2643.10, 2643.15 REPEAL: 2641.75, 2641.77
<b>Title 15</b>		11/27/06 AMEND: 94010, 94011, 94167, and Incorporated Documents
02/05/07 ADOPT: 3999.3		11/07/06 AMEND: 54342, 56076
01/18/07 ADOPT: 4034.0, 4034.1, 4034.2, 4034.3, 4034.4 REPEAL: 4036.0, 4040.0		11/06/06 AMEND: 1000600, 100601, 100602, 100603, 100604, 100605, 100606, 100607, 100608, 100609, 100610
12/19/06 ADOPT: 3413.1 AMEND: 3413		10/26/06 AMEND: 2500, 2505
12/04/06 AMEND: 3041.2, 3053, 3177, 3331, 3375		10/17/06 AMEND: 93102.5
11/03/06 AMEND: 3084.1		10/12/06 ADOPT: 6500.1, 6500.5, 6500.19, 6500.25, 6500.28, 6500.31, 6500.35, 6500.39, 6500.45, 6500.46, 6500.57, 6500.59, 6500.65, 6500.67, 6500.69, 6500.70, 6500.74, 6500.77, 6500.80, 6501.2, 6502, 6504.2, 6504.4, 6504.6, 6506.2, 6506.6, 6506.8, 6506.10, 6506.12
11/03/06 AMEND: 3375.2, 3377.1		10/10/06 ADOPT: 100010, 100020, 100030, 100040, 100050, 100060, 100070, 100080, 100090, 100095, 100100, 100110
10/06/06 ADOPT: 2275		10/05/06 ADOPT: 100001, 100002, 100003, 100004
10/03/06 ADOPT: 3352.2 AMEND: 3350.1, 3352.1, 3354, 3358		10/04/06 AMEND: 57310(b)(3), 57332(c)(3)(A), 57332(9)(A)2.a
		09/11/06 ADOPT: 100000
<b>Title 16</b>		<b>Title 18</b>
02/02/07 AMEND: 3356		01/23/07 AMEND: 25110
02/01/07 AMEND: 70		01/03/07 AMEND: 1610
01/31/07 AMEND: 884		01/03/07 AMEND: 1705.1
01/23/07 AMEND: 3305, 3306, 3307, 3308, 3309, 3310, 3315, 3316, 3320, 3321		11/13/06 AMEND: 1699, 1802
01/11/07 ADOPT: 2475		09/15/06 AMEND: 1620
01/10/07 AMEND: 974		09/08/06 ADOPT: 1125, 1423 AMEND: 1123, 1420
12/27/06 ADOPT: 1713 AMEND: 1717		
12/20/06 AMEND: 1397.61(b)		<b>Title 19</b>
12/18/06 ADOPT: 980.2, 980.3 AMEND: 980.1		12/28/06 ADOPT: 574 REPEAL: 597, 597.1, 597.2, 597.3, 597.4, 597.9, 603, 603.1, 603.2, 603.4, 603.5, 604, 604.1, 604.2, 604.3, 604.4, 604.5, 605, 605.2, 606, 606.1, 606.2, 606.4, 607, 607.1, 608, 608.1, 608.2, 608.3, 608.4, 608.5, 608.6, 609, 609.1, 609.2, 609.3, 609.4, 609.5, 609.6, 609.7, 610, 612, 613, 614.2, 614.4
12/07/06 ADOPT: 1793.8 AMEND: 1793.7		11/14/06 ADOPT: 902.9, 902.19, 906.1, 906.2, 906.3 AMEND: 901, 902, 902.4, 902.11, 902.12, 902.15, 902.18, 904, 904.1,
12/05/06 AMEND: 1397.12		
11/16/06 AMEND: 1351.5, 1352		
11/16/06 ADOPT: 1399.170.20.1 AMEND: 1399.151.1		
11/16/06 AMEND: 28		
11/16/06 AMEND: 1397.60, 1397.61, 1397.62		
11/15/06 AMEND: 4120, 4121, 4161, 4162		
11/15/06 ADOPT: 1034.1 AMEND: 1021, 1028, 1034		
11/08/06 AMEND: 4130		
11/02/06 AMEND: 3394.6		
10/31/06 AMEND: 100, 102, 109, 111, 117, 136		
10/26/06 AMEND: 345		
10/17/06 AMEND: 928		
10/11/06 AMEND: 3303.2, 3340.15, 3340.18, 3340.32, 3340.42, 3394.5		
10/03/06 AMEND: 70		
09/28/06 AMEND: 1399.156.4		
09/26/06 AMEND: 1579		
09/12/06 AMEND: 384		
09/07/06 ADOPT: 1399.391		

	904.2, 904.7, 905, 905.2, 906 REPEAL: 904.3, 904.4, 904.5, 904.6	11/27/06	ADOPT: 69106 AMEND: 69100, 69101, 69102, 69103, 69104, 69106 (renumbered to 69107), 69107 (renumbered to 69108)
<b>Title 20</b>		11/21/06	ADOPT: 97266 AMEND: 90417, 97210, 97227, 97240, 97241, 97244, 97246, 97250, 97260, 97261, 97264
12/26/06	AMEND: 1.161	10/24/06	REPEAL: 4428
12/14/06	AMEND: 1602, 1602.1, 1604, 1605, 1605.1, 1605.2, 1605.3, 1606, 1607, 1608	<b>Title 22, MPP</b>	
12/11/06	AMEND: 1605.3	01/17/07	ADOPT: 86072.1 AMEND: 83064, 83072, 84072, 84079, 84172, 84272, 86072, 89372, 89379
09/13/06	AMEND: 1, 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2, 2.1, 2.2, 2.3, 2.3.1, 2.4, 2.5, 2.6, 2.7, 3, 3.1, 3.2, 3.3, 3.4, 4, 5, 6, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7, 7.1, 8, 8.1, 8.2, 9, 10, 10.1, 11, 12, 13, 13.1, 13.2, 14, 14.1, 14.2, 14.3, 14.4, 14.5, 14.6, 14.7, 15, 15.1, 16, 17, 17.1, 17.2, 17.3, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 42.1, 42.2, 43.1, 43.2, 43.3, 43.4, 43.5, 43.6, 43.7, 43.8, 44, 44.1, 44.2, 44.3, 44.4, 44.5, 44.6, 45, 46, 47, 48, 49, 50, 51, 51.1, 51.2, 51.3, 51.4, 51.5, 51.6, 51.7, 51.8, 51.9, 51.10, 52, 53, 54, 55, 56, 57, 58, 59, 59.1, 59.2, 60, 61, 61.1, 62, 63, 63.1, 63.2, 63.3, 63.4, 63.5, 63.6, 63.7, 63.8, 63.9, 63.10, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 74.1, 74.2, 74.3, 74.4, 74.5, 74.6, 74.7, 75, 76, 76.71, 76.72, 76.73, 76.74, 76.75, 76.76, 77, 77.1, 77.2, 77.3, 77.4, 77.5, 77.6, 77.7, 78, 79, 80, 81, 82, 83, 84, 85, 86, 86.1, 86.2, 86.3, 86.4, 86.5, 86.6, 86.7, 87, 88	12/13/06	ADOPT: 82003, 82005, 82006, 82007, 82010, 82012, 82017, 82017, 82019, 82019.1, 82020, 82021, 82023, 82024, 82025, 82026, 82027, 82028, 82029, 82030, 82031, 82034, 82035, 82036, 82040, 82042, 82044, 82046, 82051, 82052, 82053, 82054, 82055, 82055.1, 82056
<b>Title 21</b>		10/26/06	AMEND: 86500, 86501, 86505, 86505.1, 86506, 86507, 86508, 86509, 86510, 86511, 86512, 86517, 86518, 86519, 86519.1, 86519.2, 86520, 86521, 86522, 86523, 86524, 86526, 86527, 86528, 86529, 86529, 86531, 86531.1, 86531.2, 86534, 86535, 86536, 86540, 86542, 86544, 86545, 86546, 86552, 86553, 86554, 86555, 86555.1, 86558, 86559, 86561, 86562, 86563, 86564, 86565, 86565.2, 86565.5, 86566, 86568.1, 86568.2, 86568.4, 86570, 86572, 86572.1, 86572.2, 86574, 86575, 86576, 86577, 86578, 86578.1, 86579, 86580, 86586, 86587, 86587.1, 86587.2, 86588, MPP 11-400c, 11-402, 45-101(c), 45-202.5, 45-203.4, 45-301.1
10/06/06	ADOPT: 10000, 10000.1, 10000.2, 10000.3, 10000.4, 10000.5, 10000.6, 10000.7, 10000.8, 10000.9, 10000.10, 10000.11, 10000.12, 10000.13	<b>Title 23</b>	
10/02/06	ADOPT: 1520, 1520.2, 1520.6, 1520.7, 1520.8, 1520.11, 1520.12, 1520.13, 1520.14 AMEND: 1520.1, 1520.3, 1520.5, 1520.9, 1520.10, 1520.15	02/06/07	ADOPT: 3939.23
<b>Title 22</b>		01/29/07	AMEND: 3833.1
01/30/07	AMEND: 2601.1	01/18/07	ADOPT: 3917
01/30/07	AMEND: 12705	01/09/07	ADOPT: 3908
01/29/07	AMEND: 12000	01/05/07	ADOPT: 499.4.1.1, 499.4.1.2, 499.4.2, 499.6.3 AMEND: 499.1, 499.2, 499.3, 499.4, 499.4.1, 499.5, 499.6, 499.6.1, 499.7, 499.8, REPEAL: 499.6.2
01/22/07	AMEND: 143-1	01/04/07	ADOPT: 3989.4
01/03/07	ADOPT: 101115 AMEND: 101115	12/22/06	AMEND: 3912
12/29/06	AMEND: Appendix X of Chapter 11 of Division 4.5	11/27/06	ADOPT: 3929.2
12/29/06	ADOPT: 66260.202	11/20/06	ADOPT: 3929.1
12/27/06	ADOPT: 66261.9.5, 67386.1, 67386.2, 67386.3, 67386.4	10/17/06	ADOPT: 3945.1
11/28/06	AMEND: 4413, 4445, 4450 REPEAL: 4412.2, 4445.1, 4446	09/13/06	ADOPT: 3916

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12/26/06 ADOPT: 1433.1 AMEND: 1002, 1016, 1105, 1106, 1110, 1134, 1216, 1254, 1317, 1330, 1338, 1338.1, 1428, 1433, 1498, 1504, 2002, 2016, 2105, 2106, 2110, 2118, 2134, 2216, 2254, 2317, 2330, 2428, 2498, 2504  
 11/27/06 ADOPT: 8460, 8461, 8462, 8463, 8464, 8465, 8466, 8467 AMEND: 8431  
 11/08/06 AMEND: 16

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01/24/07 ADOPT: 1330.67.04 REPEAL: 1300.67.8  
 12/06/06 ADOPT: 2299.1, 93118  
 09/11/06 ADOPT: 1002.4

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02/05/07 AMEND: 30-757, 30-761  
 01/24/07 ADOPT: 22-901 AMEND: 22-001, 22-002, 22-003, 22-004, 22-009, 22-045, 22-049, 22-050, 22-053, 22-054, 22-059, 22-061, 22-063, 22-064, 22-065, 22-069, 22-071, 22-072, 22-073, 22-077, 22-078, 22-085 REPEAL: 22-074, 22-075, 22-076  
 10/17/06 ADOPT: 44-111, 44-211, 69-201, 69-202, 69-205, 69-207, 69-208, 69-209, 69-210, 69-211, 69-212, 69-213, 69-214, 69-216, 69-302, 69-303, 69-304, and 69-305  
 10/12/06 ADOPT: 30-785 AMEND: 30-700  
 09/07/06 AMEND: 11-501, 42-302, 42-701, 42-711, 42-712, 42-713, 42-715, 42-716, 42-718, 42-719, 42-720, 42-721, 42-722, 42-802, 42-1009, 42-1010, 44-111, 63-407 REPEAL: 42-710

**OAL REGULATORY  
DETERMINATIONS**

**OFFICE OF ADMINISTRATIVE LAW**

**2007 OAL DETERMINATION No. 2  
(OAL FILE ## CTU 06-0829-01 AND 06-0831-02)**

**REQUESTED BY:** CHRISTOPHER HARBRIDGE AND DARRYL WAKEFIELD  
**AGENCY:** DEPARTMENT OF CORRECTIONS AND REHABILITATION  
**CONCERNING:** MEMORANDUM DD58-03,

**DOUBLE CELL HOUSING POLICY  
DETERMINATION ISSUED  
PURSUANT TO GOVERNMENT  
CODE SECTION 11340.5.**

**SCOPE OF REVIEW**

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule is an "underground regulation" as defined in Government Code section 11342.5, and must, therefore be adopted pursuant to the Administrative Procedure Act (APA). OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

**ISSUE**

In August 2006, Mr. Harbridge and Mr. Wakefield (Petitioners) submitted similar petitions to OAL alleging that the California Department of Corrections and Rehabilitation (CDCR) issued, used, enforced, or attempted to enforce an underground regulation<sup>1</sup> in violation of Government Code section 11340.5.<sup>2</sup> The alleged underground regulations are contained in Memorandum DD58-03 (Memorandum), issued by W.A. Duncan, Deputy Director, Institutions Division, addressed to Regional Administrators, Wardens, Classification and Parole Representatives, Correctional Counselor IIIs/Reception Centers and Classification Staff Representatives. The subject of the Memorandum is Double-Cell Housing Policy.

**DETERMINATION**

OAL determines that the Memorandum meets the definition of an underground regulation, is subject to the rulemaking requirements of the APA, and, therefore, was issued in violation of the APA.

<sup>1</sup> An underground regulation is defined in Title 1, California Code of Regulations, section 250:

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

<sup>2</sup> Unless specified otherwise code references are to the California Government Code.

## FACTUAL BACKGROUND

The Memorandum was issued on April 25, 2003. It is attached to this determination as Attachment #1. It states, in part:

It is departmental policy and therefore the expectation that inmates double-cell and accept housing assignments as directed by staff. The double-cell policy is to be adhered to in General Population, Administrative Segregation Unit (ASU), and Security Housing Unit (SHU) settings. If staff determine that an inmate is suitable for double-celled housing, the inmate shall be expected to accept the housing assignment and shall be held accountable and responsible for his or her actions and subject to disciplinary action as a result of staff enforcing the double-cell housing assignment.

The Memorandum concludes with the following paragraph:

The Classification Services Unit (CSU) is currently drafting and processing revisions to the CCR and the Department Operations Manual to increase the sanctions to be taken against inmates who refuse to accept a cellmate as assigned by staff.

Mr. Harbridge and Mr. Wakefield both allege that disciplinary action has been taken against them based upon enforcement of this Memorandum.

## PETITIONERS' ARGUMENT

The petitioners argue that the Memorandum is a rule, regulation, order, or standard of general application adopted by an agency to implement, interpret or make specific the law enforced or administered by the agency or to govern its procedure. The Memorandum was issued to all California State Prisons to be used in all General Populations, Administrative Segregation Unit (ASU) and Security Housing Unit (SHU) settings.

## AGENCY RESPONSE

CDCR did not submit a formal response; however, it did note that it was "working on proposed regulations to address the issues raised in the Wakefield and Harbridge (sic) Petitions."<sup>3</sup>

<sup>3</sup> Email from Timothy Lockwood, Chief, Regulation and Policy Management Branch, Corrections Standards Authority of the Department of Corrections and Rehabilitation, dated December 4, 2006.

## UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA. It states, in part:

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation. "Underground regulation" is defined in title 1, Cal. Code Regs. § 250 as follows:

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

OAL is empowered to issue its determination as to whether or not an agency employs an underground regulation pursuant to section 11340.5 subdivision (b). An OAL determination that an agency is using an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference"<sup>4</sup> in any subsequent litigation of the issue.

## ANALYSIS

To determine that an agency is in violation of section 11340.5, it must be demonstrated that the alleged underground regulation actually is a regulation as defined by section 11342.600, that it has not been adopted pursuant to the APA, and that it is not subject to an express statutory exemption from the APA.

A regulation is defined in section 11342.600 as:

<sup>4</sup> *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244

“... every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western Inc. v. Victoria Bradshaw*, (1996)14 Cal4<sup>th</sup>557, 571, the California Supreme Court found that:

“A regulation subject to the Administrative Procedure Act (APA) (Gov. Code § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code § 11342 subd. (g).)”

The first element of a regulation is whether the rule applies generally. For an agency rule to be a “standard of general application,” it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind, or order.<sup>5</sup>

The Memorandum requires that all inmates double-cell unless they are classified as requiring a single-cell. The Memorandum also lists the criteria to be used to classify an inmate as requiring a double-cell or a single-cell. By the express terms of the Memorandum, these requirements apply to all “General Population, Administrative Segregation Unit (ASU), and Security Housing Unit (SHU) settings.” The Memorandum, then, applies to most, if not all, inmates in the adult correctional system. It is a standard of general application.

The first element required by *Tidewater* is therefore met.

The second element is that the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

On July 1, 2005, the Department of Corrections, under which this Memorandum was issued, was reorga-

nized into the Department of Corrections and Rehabilitation.<sup>6</sup> Penal Code section 5054 provides that:

Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the Department of Corrections and Rehabilitation.

Penal Code section 5058, subdivision (a), states:

“5058. (a) The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise provided in this section and Sections 5058.1 to 5058.3, inclusive. All rules and regulations shall, to the extent practical, be stated in language that is easily understood by the general public.”

The departmental policy requiring double-ceiling and the criteria for classifying an inmate for double- or single-cell housing expressed in the Memorandum directly affects the “the care, custody, treatment, training, discipline and employment of persons” in correctional institutions. The policy can have a direct impact on inmates and a violation can result in a longer sentence or continued housing in a SHU. These issues are clearly within the statutory mandate of the Department. The Memorandum, then, implements, interprets, or makes specific Penal Code section 5058. Furthermore, the Memorandum implements, interprets and makes specific Title 15 Code of California Regulations, section 3315, which describes what inmate conduct constitutes a “serious rule” violation. The second element in *Tidewater* is therefore met.

The third step in the analysis is whether an exemption from the requirements of the APA applies to the chal-

<sup>5</sup> *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323–324 (a standard of general application applies to all members of any open class.)

<sup>6</sup> Penal Code section 5055. Commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the Department of Corrections and Rehabilitation, except where those powers and duties are expressly vested by law in the Board of Parole Hearings.

Whenever a power is granted to the secretary or a duty is imposed upon the secretary, the power may be exercised or the duty performed by a subordinate officer to the secretary or by a person authorized pursuant to law by the secretary.

lenged rule. Pursuant to section 11346, the procedures established in the APA “shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.”

Penal Code section 5058 establishes exemptions expressly for the Department:

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility, provided that the following conditions are met:

“(A) All rules that apply to prisons or other correctional facilities throughout the state are adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

“(B) All rules except those that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code are made available to all inmates confined in the particular prison or other correctional facility to which the rules apply and to all members of the general public.

“(2) Short-term criteria for the placement of inmates in a new prison or other correctional facility, or subunit thereof, during its first six months of operation, or in a prison or other correctional facility, or subunit thereof, planned for closing during its last six months of operation, provided that the criteria are made available to the public and that an estimate of fiscal impact is completed pursuant to Sections 6650 to 6670, inclusive, of the State Administrative Manual.

“(3) Rules issued by the director that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code.”

The first of these exemptions is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution. In the case of this Memorandum, the requirements apply to all institutions in California and to all populations within the institutions. The Memorandum cannot be classified as a “local rule.”

The second exemption applies to situations in which an institution is opening or is closing within six months. Again, that is not applicable here.

The final exemption is for rules that are excluded from disclosure to the public. The Memorandum has been widely distributed. There is no evidence that it is excluded from disclosure to the public.

We can find no other APA exemptions which would apply to this Memorandum. The Department has not

identified any express exemption from the APA which would include this Memorandum.

## CONCLUSION

For these reasons, OAL concludes that the Memorandum DD58–03, issued by W.A. Duncan, Deputy Director, Institutions Division, entitled Double–Cell Housing Policy is an underground regulation.

/s/

William L. Gausewitz  
Director

Kathleen Eddy  
Senior Counsel

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## ATTACHMENT #1

State of California

Memorandum

Date: April 25, 2003 DD58–03

To Regional Administrators, Institutions  
Division  
Wardens  
Classification and Parole Representatives  
Correctional Counselor IIIs/Reception  
Centers  
Classification Staff Representatives

Subject: DOUBLE–CELL HOUSING POLICY

It is departmental policy and therefore the expectation that inmates double–cell and accept housing assignments as directed by staff. This double–cell policy is to be adhered to in General Population, Administrative Segregation Unit (ASU), and Security Housing Unit (SHU) settings. If staff determine that an inmate is suitable for double–celled housing, the inmate shall be expected to accept the housing assignment and shall be held accountable and responsible for his or her actions and subject to disciplinary action as a result of staff enforcing the double–cell housing assignment.

It is imperative that Wardens maximize proper bed utilization and ensure that inmates are appropriately housed. Under current single–cell policy, inmates who are identified as having a history of in–cell sexual abuse, assaultive behavior toward a cell partner, signifi-

cant in-cell violence against a cell partner, or verification of predatory behavior toward a cell or dormitory partner shall be reviewed and evaluated for single-cell status. Upon determination by a classification committee that an inmate warrants single-cell status, an "S" suffix shall be affixed to the inmate's custody determination. All other inmates are expected and required to be double-celled.

Unless the above-listed case factors are present and a classification committee has affixed an "S" suffix to an inmate's custody, or an inmate is pending referral and review for "S" suffix determination by a classification committee, inmates requiring celled housing are not entitled to single-cell assignment, housing location of choice, or to a cellmate of choice. If the inmate refuses to double-cell, staff shall:

- Based on the inmate's action being a serious disruption of facility operations, California Code of Regulations (CCR) Section 3315(e)(2)(C), and the inmate's act of disobedience created a potential for violence or mass disruptive conduct, CCR Section 3315(a)(3)(H), issue the inmate a California Department of Corrections (CDC) Form 115, *Rules Violation Report*, charging him or her with the specific act of "Refusing a Direct Order," a Division F level offense.
- Upon adjudication of the CDC Form 115, staff shall attempt to double-cell the inmate by physically escorting the inmate or prospective cellmate to the designated cell. If the inmate refuses to double-cell or accept the prospective cellmate, the inmate shall be issued a CDC Form 115 charging him or her with the specific act of "Willfully Delaying/Obstructing a Peace Officer in Performance of their Duties," a Division D level offense.
- If the inmate conveys to staff a threat against any prospective cellmate and the threat prevents staff from double-celling the inmate, the inmate shall be issued a CDC Form 115 charging him or her with the specific act of "Willfully Delaying/Obstructing a Peace Officer in Performance of Their Duties by Means of a Threat," a Division D level offense (Penal Code [PC] Section 69).
- If the inmate willfully threatens the prospective cellmate with death or great bodily injury and causes the prospective cellmate to reasonably be in sustained fear for his or her safety, the inmate shall be issued a CDC Form 115 charging him or her with the specific act of "Threatening the Life of (name of person)" or "Threatening Serious Bodily

Injury to (name of person)," a Division B level offense (PC Section 422) pursuant to CCR Section 3323(d)(7). The inmate shall also be placed in ASU and, if found guilty of the offense, shall be assessed a SHU term and referred to a Classification Staff Representative (CSR) for review of a determinate SHU term. If found guilty of multiple "Threatening the Life of (name of person)" or "Threatening Serious Bodily Injury to (name of person)" offenses, the inmate shall be referred to a CSR for review of an indeterminate SHU term.

- If the inmate's verbal statements directed toward the perspective cellmate do not rise to the threshold of a felony level threat (the inmate does not threaten the prospective cellmate with death or great bodily injury and causes the prospective cellmate to reasonably be in sustained fear for his or her safety), the inmate shall be charged with the specific act of "Conduct Which May Lead to Force and Violence," a Division F level offense.

It is also a behavioral expectation that all inmates serving an indeterminate SHU term with no double-cell prohibitions be double-celled prior to being considered for release from SHU. In addition, all inmates housed on Sensitive Need Yards shall be required to be double-celled.

Single-cell status shall be designated for those inmates who demonstrate, or have demonstrated, significant in-cell physical or sexual violence against a cell partner if there is verification of predatory behavior. Staff are reminded to use correctional experience, correctional awareness, a sense of reasonableness, knowledge of the inmate population, facility environment, and the level of supervision in the housing unit when determining an inmate's need for single-cell housing.

Predatory behavior depicts aggressive, repeated attempts to physically or sexually abuse another inmate. The classification committee shall consider the circumstances of a prior in-cell physical or sexual battery against a cell partner, length of time in General Population without disciplinary violations, precipitating factors, or new issues affecting the inmate's behavior. An act of mutual combat in itself does not warrant single-cell status.

Staff shall consider the inmate's pattern of behavior, not just an isolated incident, and must weigh information in the inmate's Central File, such as:

- Documented and substantiated reports from prior cellmate(s) that the inmate intimidated, threatened, forced, and/or harassed him or her for sex.

- Documentation that the cellmate(s) refused to return to a cell occupied by the inmate because of fear, threats, or abuse perpetrated by the inmate.
- Adjudicated CDC Form 115 where the inmate was found guilty as a perpetrator in an act of murder, attempted murder, battery causing serious injury, battery, rape or attempted rape, sodomy or attempted sodomy, oral copulation and attempted oral copulation against the victim's will, or other acts of force against cellmates.

In cases where single-cell status is recommended by clinical staff due to mental health or medical concerns, the classification committee shall make the final determination of an inmate's cell assignment. The classification committee shall evaluate the clinical recommendations made by the clinician who participates in the committee and review the inmate's case factors when determining the housing assignment. Staff are reminded that single-cell status based on clinical recommendation is usually a temporary, short-term measure and must be periodically reviewed.

The Classification Services Unit (CSU) is currently drafting and processing revisions to the CCR and the Department Operations Manual to increase the sanctions to be taken against inmates who refuse to accept a cellmate as assigned by staff.

If you have any questions, please contact Marilyn Kalvelage, Chief, Institution Operations, Institutions Division, at (916) 323-4108. For technical information, institution staff may contact Linda Rianda, Chief, CSU, at (916) 322-2544.

*Original Signed by W. A. Duncan*

W. A. DUNCAN  
Deputy Director  
Institutions Division

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